

T H I R D P U B L I C H E A R I N G

BEFORE

n.g.
THE COMMISSION TO STUDY THE SUBJECT OF CONFLICTS
IN THE PERFORMANCE OF PUBLIC DUTIES BY PERSONS
HOLDING PUBLIC OFFICE, POSITION OR EMPLOYMENT,
WITH THEIR PERSONAL, BUSINESS OR PROFESSIONAL
INTERESTS - created by Senate Concurrent Resolution
No. 18 (1956) and reconstituted by Senate Concurrent
Resolution No. 9 (1957).

Held:
Senate Chamber, State House
Trenton, New Jersey
September 27, 1957.

Members of Commission present:

Senator James F. Murray, Jr., Chairman
Assemblyman Benjamin Franklin, III, Vice-Chairman
Louis P. Marciante
James M. Keating

Absent:

Albert A. Marks, Jr.

* * * *

Counsel - John H. Yauch, Jr., Esq.
Associate Counsel - Daniel A. Degnan, Esq.

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ASSEMBLYMAN BENJAMIN FRANKLIN, III, (THE VICE-CHAIRMAN:

I will call the public hearing of the Legislative Commission on Conflict of Interests to order. Senator Murray, our Chairman, has advised me that he has been delayed and will be a little late in reaching here. In order not to hold up any of our witnesses who have taken the time and trouble to appear before us this morning, he has requested that I as Vice-Chairman of the Commission open the hearing and proceed with it.

I would like to ask any of the witnesses who wish to appear before us this morning, or any persons who have not registered with our counsel, Mr. John Yauch, who is seated by the microphone, to register with him, giving their names and their addresses. We will be glad to hear any person here today, time being sufficient.

I would like to turn the hearing over now to our counsel, Mr. Yauch, who will call the first witness.

MR. YAUCH: Mr. Chairman, since the last public hearing of the Commission, which was held on September 16 last, I received a copy of a letter addressed to Senator Murray as Chairman of the Commission from Senator Edward J. O'Mara, in which he comments on part of his testimony given at the hearing on September 16. I think it would be well to read this into the hearing because it might influence what the next witness may have to say; namely, Mr. John R. Kelly, First Vice-President of the New Jersey State Bar Association.

This letter is dated September 23, 1957, and, as I stated, is addressed to the Honorable James F. Murray, Jr., as Chairman of this Commission.

"Dear Senator Murray:

"During the course of my testimony before your Committee on Monday, September 16th, I said that in my opinion the bill proposed by the State Bar Association would prohibit members of the Legislature from practicing law and that I felt that it was entirely too stringent.

"I have since been advised by Mr. Milton T. Lasher, President of the State Bar Association, that the bill in the form proposed at the December meeting of the Bar Association in Asbury Park, which was the bill I referred to, was amended at the June meeting in Atlantic City by adding at the end of Paragraph 3 the following sentence: 'This section shall not be construed to apply to ~~appearances~~ appearances before any Court.' I was not at the June meeting and did not know of the amendment, although I had previously been advised by Mr. Carpenter, Chairman of the Committee of the Bar Association which dealt with the matter, that he was contemplating the proposal of such an amendment. That was the reason I was careful to check with Mr. Yauch to see whether or not the form of the proposed bill was the same as the one which I had in my file. Mr. Yauch advised me that his copy was the same as mine. For that reason I assumed that the bill had not been amended.

"The amendment, of course, removes one of the serious objections to the bill, but in my opinion it is still too stringent. Even in its amended form it would prohibit the appearance of lawyers before the Inheritance Tax Bureau which in effect would bar them from handling estate work. It would probably bar them from appearing before the Workmen's Compensation Bureau which is not a court. It would prohibit appearances before such agencies as the Public Utility Commission, the Alcoholic Beverage Commissioner and the Department of Banking and Insurance even in controversies essentially between private parties. Furthermore, I reiterate my opinion that there is no reason why a member of the Legislature should not appear before a condemnation commission. At that stage the matter is a litigated one and the condemnation commission is merely an arm of the court appointed by the Superior Court Judge of the county where the proceeding is taking place.

"I sincerely regret that my testimony was in part based upon an error as to the contents of the bill. I would appreciate it if this letter were read into the record.

"With kindest regards, I am

Sincerely yours,
Edward J. O'Mara"

May I say that where the Senator referred to his inquiry of me while he was testifying as to whether the bill was the same, I did not see the bill. He read part of the bill to me and didn't finish reading Section 3; he said, "and so forth." I had before me at the time a copy of the bill which, as the Commission will recall, I made available to the members of the Commission by giving you the substance of the proposed bills by the State Bar Association. So it was one of those unavoidable errors. I assumed that the bill that Senator O'Mara was referring to had that exception in it.

This makes the record clear so far as that is concerned.

MR. MARCIANTE: Am I right, Counsellor, it appears here that Senator O'Mara's position is that we ought to practically remain as we are now, and not enact any legislation?

MR. YAUCH: No, I don't think the substance of Senator O'Mara's testimony is to that effect. I received a transcript of the testimony at the hearing on September 16th, and I only read it again last night, and I believe the substance of the Senator's testimony is that a Code of Ethics would be appropriate and, in certain defined clear fields, legislation would also be appropriate to deal with this subject that has been assigned to this Commission.

MR. MARCIANTE: Of course, I am not an attorney and I don't understand the implications that are contained in the proposal made here. He doesn't say that they should be permitted to go before condemnation commissions, but he says that there should be no restriction against it. I believe that's the wording he used.

It seems to me that the spotlight has been focused on this entire matter because of that very thing, and I was wondering whether that was his position or not. He said something about because of not having as yet been adjudicated - I believe is the language he uses. Will you explain that to us? I would like to get that clear in my mind.

MR. YAUCH: Well, I dislike stating what my conception is of the conclusions of Senator O'Mara, because the record of his testimony has been given to each member of this Commission. But my observation--

MR. MARCIANTE: I am talking about the letter here. I am not talking about his testimony.

MR. YAUCH: I would say that the effect of this letter of September 23rd from Senator O'Mara, with reference to the subject you just referred to, namely, appearance before a condemnation commission, is that he believes that a legislator should be permitted to appear before a condemnation commission because he conceives that that is a quasi-judicial body, an arm of the court, which is appointed by the court for the purpose of hearing testimony in condemnation cases. So my direct answer to you, Mr. Marciante, is that I believe this letter from Senator O'Mara stated that he believes that legislators should be permitted to appear before condemnation commissions.

Now, there is one other letter that I would like to read into the record - which is a very short one - which has to do with the same subject that is referred to in Senator O'Mara's

letter. The letter is on the letthead of the New Jersey State Bar Association, is dated September 17, 1957, and is addressed to me:

"Dear Mr. Yauch:

"The newspaper today in reporting on the appearance of former State Senator Edward J. O'Mara of Jersey City before the Legislature's Conflict of Interest Study Commission at Trenton quoted him as saying that the bill proposed by the New Jersey State Bar Association would exclude a lawyer members of the Assembly or Senate from practicing before any State Court. This was an understandable error on the Senator's part because he was probably referring to one of the earlier reports of our committee on Conflicts of Interest which could be so construed.

"However, the bill was re-drafted to meet objections which had been made to it and the re-drafted version submitted to and approved at our annual convention at Atlantic City in May of this year contained the following language in Section 3 which dealt with the appearance by a member of the Legislature before State agencies:

'This Section shall not be construed to apply to appearances before any Court.'

"I would very much appreciate it if you would place this on the record of your next Commission meeting since we do not want any member of the public to receive the impression that the bill proposed by our Association did not reflect careful thought and a reasonable appreciation of the position of the Legislator.

Yours very truly,
/s/ Milton T. Lasher."

Now, Mr. Chairman and members of the Commission, I introduce Mr. John R. Kelly, First Vice-President of the New Jersey State Bar Association, who is here for the purpose of giving the views of the Association with respect to the report which the Association made. There were two reports - the original report and then a second report. The original report has attached to it a copy of the bill which the Committee prepared, which has to do with the

matter of conflict of interest so far as legislators are concerned, and under Report No. 2 the bill attached has to do with state officers and employees.

MR. JOHN R. KELLY: Gentlemen, this statement was prepared and agreed upon unanimously by all of the members of the Special Committee on the Study of Conflict of Interests of the New Jersey State Bar Association.

A special Conflict of Interests Committee of the New Jersey State Bar Association was constituted in May 1956 to study the subject which is now occupying the attention of this committee. Two bills were drafted which have been submitted to your committee. Copies, in due course, will be supplied to all members of the Legislature.

The State Bar Association's committee has reviewed testimony developed at your hearing on September 16, as reported in the press, pertaining to legislators in their personal and business relations with state agencies. With due deference to the opinions of critics as registered before this committee and in comments in the public press, we must nevertheless state that we find these criticisms unavailing, with our faith in the soundness of our proposals undiminished.

Nothing said so far can shake our conviction that, in a democracy, the citizenry is entitled to a guarantee that all decisions reached or actions taken by a state instrumentality are based wholly on merit, justice, equity and fair play. Stated another way, the public must be given the assurance there is no room in its State government for resort to influence, privilege or favoritism,

whether open or covert.

We also believe in realism. We believe the ground rules for service in the Legislature cannot be left to an ambiguous code of ethics with vague sanctions. Rather, we believe these rules must be given the dignity, force and stature of codified law, with the penalty for infractions stated in explicit terms. Between a legislator and the public, there exists a fiduciary relationship of the highest degree. The terms of such a trust must be clear and unequivocal, and provide sharp teeth for violation.

For many years members of the Legislature have represented third parties before state agencies. It would be wrong to impute unethical motives to these men, for they were merely following what time had made a standard practice. But now government has become so complex, with so many ramifications affecting industry and commerce, that the public interest demands that legislators pretty much wear only one hat. The bill proposed by the State Bar Association clearly shows when and where this hat must be worn and when and where it may be doffed for another. It provides legislators with a clear standard of conduct and equally clear guide lines.

The bill proposed by the State Bar Association should not be construed as impugning the integrity of the Legislature. Rather, it should be regarded as establishing a compact between legislators and the public. If our bill is enacted, a legislator, in effect, would say to the public: "I am fully aware of the strictures imposed on

me as a member of the Legislature, and I willingly accept them as an integral part of the trust you impose in me."

The public would not be the sole beneficiary of this compact. It would serve also as a shield for our legislators, safeguarding them from possible attacks that they sought legislative service merely for personal advantage or gain. Moreover, protection would be provided for any state instrumentality concerned. It would be freed from pressure or influence and also possible accusations that its decisions or actions were improperly motivated. In other words, by specifying the ground rules, the bill proposed by the State Bar Association expressly defines the rights and obligations, as the case may be, of each party - the public, the legislator, and the state instrumentality involved. This clarification, we maintain, is essential to good government.

Some critics of our bill say you cannot legislate morality. This is specious. The history of our law, in great part, is a record of society's achievement in formalizing or codifying ethical and moral concepts that have brought peace and order into human relationships. If you reduce the argument that you cannot legislate morality to its ridiculous conclusion, the Legislature should repeal the New Jersey Crimes Act as being the stuff that dreams are made of.

Other critics of our bill maintain that the way to handle the conflict-of-interest problem is through the ballot box - vote the rascal out. This is fine in theory but not in practice. Only the big scandals become election issues. Scores of other cases, where the pressure and

influence are subtle and insidious but, nevertheless, very much present, have a way of going wholly undetected, with the electorate left in blissful ignorance. The ballot box, moreover, is a slow weapon, available to the public only once every two or four years, as the case may be. For the breach of public trust involved, a fast, handy and simple remedy is needed - and it is provided by the penalty clause in the State Bar Association's bill.

It is also argued that the restrictions and prohibitions in our bill would foreclose many fields of practice to attorney-legislators and others and, hence, considerably narrow the number of persons qualified and willing to serve in the Legislature. We reject this thesis as untenable. There is not now and never will be a dearth of outstanding candidates for seats in the Assembly or Senate if our proposals are enacted into law.

It should be borne in mind that the State Bar Association's bill was drafted by a large committee of lawyers wholly cognizant of the bill's pocketbook threat to their profession. Let us remember, too, that this bill was unanimously approved at the Association's annual meeting last May, which attracted a record-breaking number of New Jersey lawyers. Why, it may be asked, should such a large assemblage of attorneys vigorously advocate proposed legislation with obvious economic disadvantages for their profession?

The answer is not difficult. These men believe that, in a democracy, the criterion should be the greatest good for the greatest number. They believe that guaranteeing

the public fair play in government is vastly more important than preventing some economic discomfort for a relative few. They also believe that, despite the restrictions contained in the bill, there would be considerably more than enough attorneys and members of other callings and professions who would be ready, able, and eager to seek legislative office. The spur would be the honor of the office, the esteem of the public, the opportunity to serve the State and, last but certainly not least, the \$5,000 annual salary.

We are dealing here with a complex problem. Experience shows it cannot be solved by good intentions or half measures. It demands a forthright, realistic approach, which recognizes the truth of the old adage that one cannot serve two masters - the public and a private client. We respectfully submit that the bill sponsored by the New Jersey State Bar Association fully resolved this problem of conflicts of interest.

If I may, personally, for just a moment call to your attention something which may have been forgotten over the last few months: Within the year, in our federal government, the conflict of interest laws - and you know they have them - plus the public attitude have tripped up men in high public office, including cabinet members. Within this year a member of the President's cabinet resigned because his public office telephones had been used to promote private interests.

In another case an Assistant Secretary of Defense took a leave of absence while the Senate conducted its inquiry to determine whether a public contract awarded to a member of his family was properly awarded, even though it was awarded

to the lowest bidder with all the protections that are supposed to be wrapped around this bidding system.

I must say to you that the law we propose is, to be sure, an exacting code. It poses a serious question concerning restraints on public officials. But none of us would say that a legislator who happened to represent a particular industry could conscientiously and rightfully and morally introduce and advocate the passage of a bill which would benefit his particular industry; nor would we say that an attorney or other representative who represented the interests of labor could come forward and, without regard - and that's important to remember - for the over-all public good, urge the passage of legislation which would only benefit his particular constituents.

We doubt that there is any question the public demands that there cannot be a whisper of conflict between public service and private gain.

On occasions our proposals may prove to be harsh but it is the high standard that demands that public officials must be above suspicion. For my part, I would not like to see this standard lowered. Only by keeping this standard high can we expect to maintain public morality. Adherence to this high standard is the purest basis for complete public trust.

Personally, I was hopeful that our Legislature would have favorably considered this legislation long before this date, since it is in the public eye now for over sixteen months. But I realize that these things move slowly. This was perhaps hoping for too much. But my confidence in the ultimate passage of this type of bill remains undimmed. I am certain there are

sufficient leaders among the men in the Senate and Assembly whose private interests do not blind them to the public necessity. Of this, gentlemen, you may be absolutely certain, that whether the present Legislature takes action or not on this bill - as hopeful as I am that it will - you may rest assured that the State Bar Association will not leave a stone unturned to continue its efforts, each month if necessary but certainly year after year, until the Legislature of the State of New Jersey takes action and passes such a bill.

As sponsor of the original resolution which created the committee or which led to the creation of the committee of the State Bar Association, I personally will continue my interest.

Thank you for this opportunity to appear here.

MR. MARCIANTE: Mr. Kelly, I take it then that you are diametrically opposed to the position taken by the E C O. The E C O is an organization - I don't know how many there are, but we had a witness here at our first hearing who testified for the E C O, and his theory was that good men are driven from government because they are not allowed to operate without criticism, etc., and he opposed any kind of legislation. Your Bar Association takes an exactly opposite view. You are, then, for the enactment of these two bills which you have here. That is your total program?

MR. KELLY: It is. And in answer to the suggestion that good men are driven out of public office - not enough good men take an interest in public office, and that's the reason why we have the situation we have.

MR. MARCIANTE: Well, they cite the Wilson case.

MR. KEATING: Mr. Kelly, would you care to comment on Senator O'Mara's revised opinion on your proposed bill, and with particular reference to the part where he makes some strong representations that lawyers would be prevented from appearing before certain agencies or condemnation commissions. What is the Bar Association's feeling on that? Do they feel that they should be prevented or will there be some modification of your bill to provide for Senator O'Mara's objections?

MR. KELLY: I must state that I disagree with the Senator. Certainly, all of the members of the Legislature and the public itself recognize the terrific conflict of interest that occurs any time a lawyer would attempt to represent both sides of a dispute. Yet we have lawyers who are members of the Legislature, and who certainly must be representatives of the State, becoming involved before state agencies and commissions wherein private interests are concerned.

I might say to you that various persons have spoken to us and criticized the bill as being too harsh. May I just point out, as Mr. Marciante referred, I believe, to the Wilson case and other cases, that men in high public office in the federal government, as you know, can't even hold stock in such companies. They are prohibited from practicing before certain agencies, and the question has arisen, "Well, there is quite a difference between the salary they receive and the salary a State Senator receives."

I tell you now that there are very, very few State Senators in New Jersey who would exchange their personal income for what the average personal income for Congressman

is. The personal income for a Congressman is somewhere around \$20,000, and for that he must maintain two homes, take care of all his traveling expenses, and do many things which require the expenditure of money, and he has no time to engage in public practice, much less to appear before public agencies in the federal government.

MR. KEATING: Now, I don't want to put myself in the position of defending Senator O'Mara, but I would like your comment on some of his statements: For instance, in our last hearing, he made the statement that, with our complex business life today, it is hard for anybody to do business without coming in conflict with the State - licensing, for instance, inheritance taxes. If I were to take what he says at face value, I get the impression that the moment a lawyer went into the Legislature he was all through practicing law. He would be all through practicing law the moment he went into the Legislature.

In other words, he gave me the impression that you can hardly start out in the morning without doing business with the State in some form or another.

MR. KELLY: Perhaps I shouldn't say this, but I'm sure that if you were to take the average successful lawyer, you would find that while he has some contact in some instances or a great deal of contact in business with state agencies, that average successful lawyer wouldn't have anything like the amount of business with state agencies as the average Senator would have. And we might ask why?

MR. YAUCH: Gentlemen, may I say this: Mr. Kelly informed me this morning that he has a matter which requires

his attendance in court in Newark at twelve o'clock, and I had in mind that many of the questions which you have thus far put to Mr. Kelly could appropriately be put to subsequent witnesses who are here on behalf of the State Bar and who are also sponsoring this statement which Mr. Kelly has read into the record. So, if it's agreeable to you, I would suggest that we excuse Mr. Kelly and then hold these questions which you have, which I appreciate are very important ones, until the following witnesses appear.

ASSEMBLYMAN FRANKLIN: I know the members of the Commission will be glad to do that, Counsel.

I would just like to say to Mr. Kelly that we of the Commission appreciate very much your coming down here this morning to testify. We know that the State Bar Association has spent a great deal of time and effort and thought in developing the proposals which you are presenting to us today. We intend to give them the most careful consideration. We appreciate greatly the thought and effort which the State Bar Association has put into this very important subject.

MR. KELLY: Believe me, gentlemen, I regret more than anyone else not being able to sit here and answer your questions. I would be delighted at another time.

MR. YAUCH: I would just like to add this one thought to what you have said, Mr. Franklin: I think this report, for the two reports, that the State Bar made, the formal reports, and these views which Mr. Kelly has expressed here this morning will be very helpful to this Commission. It certainly gives us the full and complete viewpoint and, from my observation, it's a very competent, courageous and forthright statement of the position as they see it.

ASSEMBLYMAN FRANKLIN: Counsel, will you call the next witness.

MR. YAUCH: Mr. Chairman and gentlemen of the Commission, our next witness is Mr. James D. Carpenter, Dean at the Bar of the State of New Jersey, of Jersey City, who was Chairman of the New Jersey State Bar Committee at the time the two reports which I have already referred to were prepared and submitted to the State Bar Association membership. It is with great pleasure that I introduce now Mr. Carpenter.

JAMES D. CARPENTER: Thank you, Mr. Yauch.

Gentlemen, I appreciate very much the opportunity of coming here and giving you the views of our Committee which prepared this bill, these two bills. I personally presented these bills to our Association - the first one at the meeting in Asbury Park last December, which had a very large attendance, and there was only one gentleman who voted against it when it was moved for adoption. At the conclusion of that meeting, after that bill was approved, the Association adopted a resolution directing our Committee to prepare this second bill relating only to State employees and officers employed by the State. That bill was presented in Atlantic City at the meeting in May, which was a very much larger meeting, and the first bill was moved because it had been amended and that was approved - both of them - unanimously.

Now, we had before us sworn testimony which was given to a commission appointed by Governor Edison when he was Governor of this State, and testimony of a great many witnesses that was taken by him. The report is on file in the State

Library and I was furnished a copy. I am referring to a report by Mr. Roger Hinds who conducted that investigation some years ago. We also examined the laws of many states, the constitutions of many states, and patterned, I may say, our law to a large extent on the provisions of the acts of Congress relating to this very subject. And I think that is so important that I have had copies of the pertinent acts of Congress made and I will be very happy to give a copy to your Counsel and copies to you gentlemen.

May I say this: We have in the acts of Congress laws that are practically the same as this draft of law. Here are copies that I will give to you, Mr. Yauch, and copies to the members of the Committee.

Now, this Section 281 of the United States Code was adopted 90 years ago by Congress and it provides that whoever being a member of or delegate to Congress or a resident commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest or other matter in which the United States is a party, or directly or indirectly interested before any department, agency, court martial, officer, or any civil, military or naval commission, shall be fined not more than \$10,000 or imprisoned not more than 2 years, or both, and shall be

incapable of holding any office of honor, trust or profit, under the United States.

Look at Section 282 - Whoever being a member of or delegate to Congress or a resident commissioner, either before or after he has qualified, practices in the court of claims shall be fined not more than \$10,000 or imprisoned not more than 2 years, or both, and shall be incapable of holding any office of honor, trust or profit, under the United States.

Then 283 - Whoever being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim, otherwise than in the proper discharge of his official duties, or receives any gratuity or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, shall be fined not more than \$10,000 or imprisoned not more than 1 year, or both.

284 - Whoever having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, within two years after the time when such employment or service has ceased, prosecutes or acts as counsel, attorney, or agent for prosecuting any claims against the United States, embodying any subject directly connected with which such person was so employed or performed duty, shall be fined not more than \$10,000 or imprisoned not more than 1 year, or both.

Now, the representatives of the State of New Jersey in the Congress of the United States, whether it be a Congressman or a Senator, is forbidden to have any interest in a claim against the United States or to prosecute the claim in the Court of Claims. That means you can't prosecute a claim for under \$10,000 in the United States District Court, or any court in the Court of Claims no matter how much is involved. And yet, the representatives of the State of New Jersey, as far as interests in the State of New Jersey are concerned, have up-to-date been allowed to appear before condemnation commissioners; they have been allowed to present their claims to departments before the condemnation commissioner is appointed; they have influenced the appointment of condemnation commissioners; and they have prosecuted cases before condemnation commissioners, taken appeals and prosecuted the claims before the courts and even on appeal. They could not do that if they were members of Congress. And why, if they can't do it in Congress, should they be allowed to do it in the State of New Jersey? It seems to me the reason it is not allowed in the United States of America is a sound reason why it should not be allowed in this State - because there is a conflict of interest as between the individual who has a claim against the State and his representative representing the State of New Jersey. He is acting in a sense for both sides. And we think those matters are wrong.

Mr. Hinds, in his report, shows instance after instance where the State has been compelled to pay more money where

a Senator or an Assemblyman represents the claimant, than it would if he were represented by somebody outside. That directly affects the public purse and directly affects the interest of the State.

No one can say that we haven't been able to get good representatives in Congress from New Jersey because of this law, and certainly it is a lot more difficult to represent the State of New Jersey in Congress than it is in the Legislature of this State because the representative, be it Senator or Assemblyman, in the State, doesn't have to spend practically all of his time out of the State to work in Congress and be deprived of the opportunity to carry on his own affairs as he can if he is a member of our Legislature.

That answers, I think completely, the contentions of Senator O'Mara who probably hadn't read these Acts of Congress and didn't realize how they affect the people of this State.

ASSEMBLYMAN FRANKLIN: Mr. Carpenter, I want to say at the outset, again, that the Commission appreciates very much your appearing before us today. We know that as a distinguished member of the Legal Profession you are a very busy man. So at the outset I want to thank you for appearing before us and taking the time out of a very busy schedule.

MR. CARPENTER: If I can be of any help to the interests of the State and its people, I am glad to do it.

ASSEMBLYMAN FRANKLIN: We are most appreciative of your aid to us and your being down here today. Now, one of our problems that faces this Commission, it seems to me, is

a question of degree, really. I suppose that all of us, to some extent, have a conflict of interest. We are taxpayers, for example, and any legislation affecting taxes I would suppose would involve some degree of conflict of interest when you as a taxpayer also as a member of the Legislature pass on revenue raising bills. And I wondered, therefore, if I might ask you several questions, specific questions regarding the provisions of your proposed bills in an effort to determine the extent to which you think they should go, and I would like to refer you to section 3 of bill number one regarding the Legislature, and ask you several questions as to it.

MR. CARPENTER: May I say this: I take it from the newspaper reports that I have read and what little I have read of Senator O'Mara's testimony, that there is no objection to paragraphs 1, 2, and 4 of the bill, and the only objection to paragraph 5 was that it provided that for such an offense anyone was forever disqualified from holding any office or position of trust or profit under the State. Aside from that, it seems to me I have heard no criticism of those other paragraphs.

MR. YAUCH: You didn't include, Mr. Carpenter, paragraph number 3.

MR. CARPENTER: No, I passed that up because Mr. Franklin's question was directed to that. But may I point out that that provision in paragraph 5 was taken from the Act of Congress. That was my precedent. Now then, we address ourselves to paragraph 3.

ASSEMBLYMAN FRANKLIN: Thank you, Mr. Carpenter. The first question I have is - was it your feeling that that paragraph when it refers to a State agency or other instrumentality of the State of New Jersey, by whatever name designated, - does that include a municipality and municipal bodies? Municipalities are, of course, I suppose in a general sense, instrumentalities of the State.

MR. CARPENTER: While it is true that a municipality is an instrumentality of the State, it was never my thought that it would apply to his appearance before a council or a board of freeholders.

ASSEMBLYMAN FRANKLIN: In other words, it was your feeling that the intent of that section was to limit it to State agencies in the normal sense and not to include county agencies or municipal bodies?

MR. CARPENTER: That's right. And here is the reason in back of it, that is, that - referring now to State Senators, - they have control largely over the fixing of compensation, the fixing of terms, the appointments, etc. It is a matter of influence. What influence would they have, for instance, over the actions - or what control would they have over the man in an agency if he didn't do what they wanted him to do? That is the purpose back of it.

ASSEMBLYMAN FRANKLIN: Now, I have another question, and this concerns the prohibition contained in this section which, as I gather it, prohibits any member of the Legislature, either directly or indirectly, from appearing before any State agency

in relation to any cause, proceeding, application, or other matter involving any award, license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, claim or benefit. Now, I wondered about the situation, for example, of a member of the Legislature who is a businessman and who filed, we will say, an employer's schedule in connection with his unemployment compensation tax. I suppose to some extent he is participating in a decision of the State agency that the tax he is paying is proper and just. Now, does this prohibition apply to a situation such as that, do you think?

MR. CARPENTER: I would think that he is complying with the law when he is filing a report that the law requires..

ASSEMBLYMAN FRANKLIN: Now, suppose that there is a difference of opinion as to the proper amount involved between his business and the State agency; what would happen, in your opinion, in that case?

MR. CARPENTER: I think that the Senator or the Assemblyman himself should not assert the claim. I think it should be asserted by some other officer of his corporation or a partner or somebody like that.

ASSEMBLYMAN FRANKLIN: Well that brings me to my next question. If, for example, he is president of a corporation or member of a partnership and if his partner appears, or another officer of the corporation appears, as you suggest, is he appearing indirectly before the State agency under the terms of this section and, if he is, would the prohibition apply?

MR. CARPENTER: Well certainly I don't think the law should go that far.

ASSEMBLYMAN FRANKLIN: The reason I raise the question, sir, is because it seems to me that the breadth of the language before us might indicate a possible application to such a situation.

MR. CARPENTER: Well certainly I don't think that is the intention of anybody. We don't want to prevent anybody who has an honest and just claim in his own behalf from presenting that claim to the State. What we do want to direct our attention to are these sub rosa appearances in behalf of a client for a fee.

ASSEMBLYMAN FRANKLIN: I understand. I think our objectives are the same but it is a question of trying to specifically arrive at them where we all face a difficulty.

MR. CARPENTER: Let me say this, if I may: As I said in our report to the State Bar Association - we don't claim any particular pride of authorship, we don't say that this is the last word. We knew that our work would be reviewed by the Legislature, it would be debated and discussed and probably amended, but we have done the best we could to present this matter to the Legislature so that when they get in committee or caucus or your commission can work this out the way you think is sound. We looked on this more as the ideal and we hope you can improve it.

ASSEMBLYMAN FRANKLIN: Well we appreciate that very much and I hope you understand that we are not asking these questions in any derogatory sense. It is an effort to clarify it.

MR. CARPENTER: And to improve it. That's what we want.

ASSEMBLYMAN FRANKLIN: I had several other questions along the same line. Another situation I thought of was a member of the Legislature who is a working man and who has an accident and applies for workmen's compensation, for example. Is there any possible application of the provisions of this section in a situation like that?

MR. CARPENTER: Of course, there are no workmen's compensation claims against the State of New Jersey as such.

ASSEMBLYMAN FRANKLIN: That's correct, but it is a State agency.

MR. CARPENTER: You mean if a man was in the Legislature and he was injured working for the State Highway Department could he assert his claim.

ASSEMBLYMAN FRANKLIN: Yes.

MR. CARPENTER: Well I think it is pretty far removed to say that any member of the Legislature is going to be in the position of working for the State Highway Department where he could be injured.

ASSEMBLYMAN FRANKLIN: Well, assume that he is working for a private employer and he presents a claim before the Workmen's Compensation Bureau, which is a State agency.

MR. CARPENTER: I wouldn't think that would have any application.

ASSEMBLYMAN FRANKLIN: All right, sir. Now turning to the lawyers, and I suppose I am interested in this question as a lawyer myself, let me ask you this: Do you think that

this prohibition would apply or should apply to an attorney filing a transfer inheritance tax return with the Bureau?

MR. CARPENTER: For a private client? No, I don't think it would. See, this was strictly aimed at appearing before them and asserting their claim because he is a Senator and asking a better break than somebody on the outside could get. That's what we want to aim at.

ASSEMBLYMAN FRANKLIN: In other words, you would not construe the filing of a written tax return as an appearance as set forth here in this section where you say "No member of the Legislature shall either directly or indirectly appear."

MR. CARPENTER: Appear.

ASSEMBLYMAN FRANKLIN: Suppose then there is a difference of opinion between the Tax Bureau and the Attorney filing the return and he must appear before them, then the prohibition would apply at that point, I would presume. Now, do you think that the prohibition would apply to his partner appearing in connection with a difference between the Bureau --

MR. CARPENTER: I don't think it should. I think it should stop the Senator or Assemblyman from going in and asserting his power or authority as an officer of this State for getting a better break for his client than anybody on the outside could. That is what you want to stop.

ASSEMBLYMAN FRANKLIN: I can understand your objective there. The reason, again, that I ask the question is because of the language of the provision which says that "No member shall either directly or indirectly appear." It seems to me that you might have a question --

MR. CARPENTER: A question as to what is indirect, is that what you mean?

ASSEMBLYMAN FRANKLIN: Yes, sir. That's right.

MR. CARPENTER: Perhaps you could clarify that and say "shall appear". Strike out "directly or indirectly" and say "shall appear", for after all it is the appearance that causes the trouble. For instance, suppose a Senator wanted to get a franchise from the Board of Public Utility Commission or some - not a Senator but some corporation did - and went to a Senator of some prominence or the Speaker of the House or somebody like that and he, because of his position, would go before the Public Utility Board and have a better chance of getting it than anybody else. Perhaps one or two members of the Board might be coming up for confirmation or seeking appointment. That is the sort of thing you want to aim at. I would say that if a Legislator had a client whose will had been drawn by him, of course he should be allowed to file the tax return and see it through the Bureau or have somebody else do it. But to say that he should, on the other hand, have his services available to other lawyers and use his power and influence to throw his weight around to get something for the other lawyer that the lawyer couldn't get for himself or for his own client - that's what you want to stop.

ASSEMBLYMAN FRANKLIN: One reason I was particularly interested in this question also, Mr. Carpenter, is that it is my understanding, under the prevailing interpretation of the Federal Statutes and Regulations, to which you refer, that a partner of a lawyer who is a member of Congress or a

government official is not supposed to have any dealings with any federal bureau, including the filing of estate tax returns.

MR. CARPENTER: I haven't followed that through. I haven't looked that up.

ASSEMBLYMAN FRANKLIN: So, you see, there would be a fundamental difference in attitude then between your interpretation and my understanding of the federal requirement. I know that I had a partner who recently received a federal appointment and had to sever completely any connections with the firm whatever because it was our understanding that we should not even file a federal estate tax return.

MR. CARPENTER: It may be a regulation of the Department that I haven't thought to look up.

ASSEMBLYMAN FRANKLIN: So that your interpretation might suggest a possible difference between the prevailing federal interpretation.

MR. CARPENTER: That may be. That may be. I haven't looked that one up to see how they do consider that in the federal tax work.

ASSEMBLYMAN FRANKLIN: I just have one other question and that is - one of the differences that bothers this Commission between the State legislative representatives and many employees and the federal situation is that the federal employees and members of Congress are full-time positions while the State legislative representative holds a part-time position and a good many State employees also are employed part-time in civilian activities, as it were. Now, do you think that

that basic difference might suggest any possible differences in the federal application and State application of conflict of interest regulations?

MR. CARPENTER: I do not.

ASSEMBLYMAN FRANKLIN: You do not.

MR. CARPENTER: I do not.

MR. KEATING: Mr. Carpenter, I would like to refer to section 3, with particular reference to the first ten or twelve words of that section. You have stressed the word "appear" in reply to Assemblyman Franklin's questions. Now, as I understand it, you saw no objection to house counsel of a corporation of which a Legislator happened to be the president or a major official. You saw no objection to house counsel or another officer of the corporation who happened to be a lawyer appearing in an action.

MR. CARPENTER: I think I would go further than that. I don't think that's my views. If the house counsel of a corporation is a member of the Legislature, I do not think he ought to appear for that corporation.

MR. KEATING: Well then suppose that the Legislator happens to be the President of the corporation.

MR. CARPENTER: I don't think he should appear.

MR. KEATING: You think it is proper for the house counsel of a corporation to appear in that case?

MR. CARPENTER: I don't think he should. I think they should employ somebody else.

MR. KEATING: Outside counsel?

MR. CARPENTER: Yes, sir.

MR. KEATING: All right. Now, how do you feel about a partner in the firm of a Legislator?

MR. CARPENTER: You are coming to a close one there. I don't know myself what the answer is. I know that in my own firm I wouldn't want a partner who was in the Legislature because I wouldn't want such a conflict of interest to exist.

MR. KEATING: Well, I can conceive of our larger firms in New Jersey where a member of the firm could be a Legislator and come in very little contact with some of the partners of that firm and yet you would bar any member of that firm from running for the Legislature, according to what you have just said.

MR. CARPENTER: No, I wouldn't but I would say to him "while you are in the Legislature you practice law on your own". I wouldn't have him a member of the firm.

MR. KEATING: Then he would have to leave the firm.

MR. CARPENTER: I wouldn't have a partner in my firm who was a member of the Legislature.

MR. KEATING: All right. Now I am getting back to what Senator O'Mara said, and I don't want to be in a position of defending Senator O'Mara, I am merely raising questions as a point of information. He made the flat statement here that a lawyer can hardly leave home in the morning and go down to his office and not have a conflict of interest if he happens to be a legislator.

MR. CARPENTER: Well, put it another way. What are the conflicts of interest that we are aiming at? We are aiming at the type that affects only occasionally a member

of the Legislature. I think that the great majority of the members of the Legislature would never violate this law but there are occasionally -- I am talking now of past history, going back to the report of Roger Hinds -- occasionally in the past there have been instances where a member of the Legislature has traded, put it that way, on his influence as a member of the Legislature. That is the sort of thing that has got to be stopped.

MR. KEATING: Well, previous witnesses have stressed that the undue influence does not necessarily have to be in the form of money, it can be that itself - influence.

MR. CARPENTER: What does the peddling and sale of influence amount to? It amounts to getting money for the job, doesn't it?

MR. KEATING: You're right. Correct.

MR. CARPENTER: And that is the sort of thing that should be stopped.

MR. KEATING: That is what the Bar Association wants to shut the door on really, undue influence.

MR. CARPENTER: That's right.

MR. KEATING: Thank you very much.

MR. MARCIANTE: Mr. Carpenter, just as a matter of historical interest I notice here in bill number 1 that this bill was adopted in December of 1956 with one dissenting vote.

MR. CARPENTER: That's right.

MR. MARCIANTE: I notice bill number 2 - was that adopted at the same time?

MR. CARPENTER: No. That was not drawn at that time. That was drawn later at the request of the Association. They

passed a separate resolution and that was prepared in March of this year, I think, and submitted to Senator Murray after the State Bar had approved both of them.

MR. MARCIANTE: Now, Mr. Carpenter, I think you will agree with us or with anyone that there is apt to be an area of doubt as to what would be an ethical representation and what would not be an ethical representation by an attorney who is a member of the Legislature, as has been brought out here on more than one occasion. It is my belief, and I think yours, that there are specific instances where there is no question but that it would be unethical.

MR. CARPENTER: That's right.

MR. MARCIANTE: And that there are areas of doubt as to whether they are ethical or not ethical in other cases. Would you agree with me when I say that there should be an agency of some kind that an attorney who is a member of the Legislature could consult as to whether he was representing a client ethically or whether he was not. In other words, what I am driving at is this - later on I think our State Federation of Labor spokesman here will present a proposal that we set up some kind of ethical practices committee for the Legislature and we feel that it has a contribution to make because of the fact that it would give someone an opportunity to be advised before they do something that they may be criticized for later. What would be your opinion of that kind of Commission?

MR. CARPENTER: Well, I will give you the advice that an old lawyer gave to me years ago when I was studying law.

He said: "From time to time while you practice law you will have questions arise in your own mind what to do in a given case or whether you should take a case or not" and he said, "Always feel free to go to an older lawyer and talk it over with him and ask his advice." Now you have in this State plenty of lawyers to whom a Legislator can go and talk over the matter and get their advice as to whether or not it is proper, appropriate and ethical or legal for him to take a certain case or whether he ought to leave it alone. Now, that's my answer to that.

MR. MARCIANTE: You don't think that a Commission could serve any useful purpose?

MR. CARPENTER: Of course it could but I don't think it is necessary.

MR. MARCIANTE: You don't think it is necessary.

MR. CARPENTER: That's right. I don't know of a lawyer in this State of any standing who would either decline to advise a man and wouldn't do it free of charge, if you asked his advice.

ASSEMBLYMAN FRANKLIN: Mr. Carpenter, I understand that it was your feeling that probably no partner of a law firm should serve as a member of the Legislature.

MR. CARPENTER: That's my own view.

ASSEMBLYMAN FRANKLIN: Yes, I understand. And I wanted to ask you again if you thought the language of this section 3 would apply to a partner of a lawyer in the Legislature who appeared before a State agency.

MR. CARPENTER: As this is drawn now, I believe it would apply to a partner.

ASSEMBLYMAN FRANKLIN: Then I wonder - again I am just trying to find out the degree to which we are going. Would it apply to an associate in a firm, do you think? In other words if a partner in a firm is a member of the Legislature, do you think any associate in the firm also would be prohibited from appearing before any State agency?

MR. CARPENTER: If he was appearing for the Senator or for the Legislator, then the Legislator would be appearing indirectly by his own paid employee. What is the difference anyhow, so far as the effect goes, provided the employee passes on to the member of this department or another department that I am appearing for Senator so-and-so and he wants to see this done. You don't want that, do you?

ASSEMBLYMAN FRANKLIN: I was thinking more of a case where he was appearing on firm business which perhaps had no relation to the work of the partner who was in the Legislature but I am thinking also, of course, that whatever the firm does, in a sense, is on behalf of each of the partners. Do you think it would apply to that case also? or should apply?

MR. CARPENTER: Well, the Legislator would be getting his share of the fee, wouldn't he?

ASSEMBLYMAN FRANKLIN: Exactly, as a member of the partnership. That is why I wondered if it was your opinion that the prohibition would also apply to associates.

MR. CARPENTER: I think so. I really think that when you consider the interests of the State and the people of the

State and you want to see that everybody gets their fair and equal share, you have got to put a stop to that sort of thing and it is better to go too far than not far enough. We have had enough instances in the past of how the State has been pretty badly affected by some of these things and now that the matter is before the Legislature and your august Committee why not do the job and do it right and let the chips fall where they may, and do it in the public interest rather than in the interest of some fellow who comes down here to the Legislature for the purpose of trading on his position. We have had that in the past.

ASSEMBLYMAN FRANKLIN: Right. As I say, I think we are all in agreement on the general objective. There is no question about that.

MR. CARPENTER: I am not so sure - if I may interrupt a minute - about the contention of Senator O'Mara that you wouldn't be able to get good men in the Legislature. I think that is wholly unsound, for this reason: That is a reflection on all the good members of the Legislature, men who are down here now who never do these things. After all, it is only the occasional bird who comes down here and wants to trade on his position, sell influence and sell his services to the high bidder. The great multitude of men who want the honor of serving in the Legislature don't come down here for any other purpose except service and the fellow who wants to come down here to trade on his position, sell influence for what he can get, you don't want him in here anyhow.

ASSEMBLYMAN FRANKLIN: Well, what I am trying to do at the moment is just sort of chart in my own mind the extent of the prohibition which you think is proper and which the Bar Association thinks is proper. Now, I would like to turn to a business entity. I think it was your feeling earlier that, say, the officer of a corporation who is a member of the Legislature should not appear in connection with any State agency involving the corporation - should not personally appear. Now, it seems to me if this prohibition applies also to the partners of a law firm, I wonder if you feel that the same prohibition, and for much the same reasons, would also apply to partners of a business entity or the officers of --

MR. CARPENTER: I don't think that, Mr. Franklin, and this is the reason: The officer of a corporation who is in the Legislature is the one that I don't think should be allowed to appear in behalf of his corporation before an agency or a commission or whatnot. Now, if he doesn't appear on its behalf and somebody else appears for that corporation - it should have representation but it shouldn't be official representation, it shouldn't be a member of the Legislature appearing for it. It is true that he may be a stockholder of the corporation, he may be an employee of it, but the vice we want to reach is the action of the Legislator himself. When somebody on the outside, another officer or an outside counsel for the corporation appears, the matter isn't affected by this official representation. That is what we want to avoid.

ASSEMBLYMAN FRANKLIN: How would you feel about a commercial partnership? Do you think the prohibition should apply to all partners in a business partnership?

MR. CARPENTER: Let that partnership employ counsel outside of the intimate family.

ASSEMBLYMAN FRANKLIN: I wasn't thinking of the employment of counsel so much as perhaps an appearance as a witness in a proceeding involving the corporation.

MR. CARPENTER: Oh, that wouldn't be affected. Of course, he should appear as a witness. But you see what you have got to reach in a bill like this is that one thing that creates the conflict of interest and that is the representative of the State, on the one hand, being at the same time the representative of the claimant for whatever it wants, whether it is a money claim or whether it is for a franchise or some other benefit - that is the thing you want to reach.

ASSEMBLYMAN FRANKLIN: Well, my question again goes to section 3 where you say "No member of the Legislature shall either directly or indirectly appear." and I wondered if you had a business partnership and one of the partners is a member of the Legislature, whether in view of that language another partner of the business entity making an appearance on behalf of the partnership might not fall within the prohibition.

MR. CARPENTER: Well, if you consider the partnership as a business entity, as you just said --

ASSEMBLYMAN FRANKLIN: Yes, a business partnership.

MR. CARPENTER: -- then the Legislator ought not

appear for that entity but that entity could have the claim presented by somebody else. You get away then from the surreptitious influence, if you want, and the appearance is made not by the member of the Legislature but by the entity through somebody else.

ASSEMBLYMAN FRANKLIN: Well, the question I am raising, you see, is a partnership that, for example, has a tax matter and to contest a tax matter, of course, they must appear. I just wondered how much difference there is between having another member of the partnership enter the appearance. All the partners share from the profits of the partnership, just as in the case of a law firm. I just wonder what the difference is between having another partner in a commercial business enter the appearance before a State agency and another partner in a law firm entering an appearance on behalf of a client that has no relation to the business of a partner in the law firm who is in the Legislature.

MR. CARPENTER: Well, those things are difficult.

MR. KEATING: Mr. Carpenter, you have been so frank and forthright in your replies that I am tempted to ask you a question that has bothered me for a long time as a non-lawyer.

MR. CARPENTER: If I can help you, I am at your service.

MR. KEATING: I have always had the feeling that, if I had a lawyer representing me and I felt that he was doing something that was improper or unethical, before I took positive action against him I could go to the Bar Association and get some advice about my qualms. Now, previous witnesses have pretty much impressed on me that all these rascals you

are aiming at are lawyers. As lawyers, what has the Bar Association done in the past with reference to their iniquitous activities? Have they taken any positive action?

MR. CARPENTER: I can't think of a single one. Nor can I think of a single one where the Senate of this State has ever kicked out a Senator who has been proven to have done some of the things we are speaking of.

MR. KEATING: That has been pretty well documented in previous hearings also. My question is: Why hasn't the Bar Association done something about it and are these bills the answer to my question - that the Bar Association has suddenly become aware of the necessity for legislation to control their own members.

MR. CARPENTER: You must remember, sir, that there is no clear-cut law on the books of this State affecting that situation. I have here copies of the New Jersey Statutes that relate to officers of municipalities or counties, employees of institutions of this State, members of the Boards of Freeholders, but you have never passed a law - I speak now of the Legislature - relating to members of the Legislature and what they can and cannot do or employees of the State or agencies of the State as to what they can or cannot do. The courts have had to rely on the common law. As recently as the opinion of Judge Hughes, filed September 6, in the Hoffman Case, and going back to the Burlington Bridge Case which affected a former Senator, they have found law that applies where there has been an indictment or some other litigation. But the State Bar, because of some of these things, has

finally come around to the view - and I think we are better organized in the State Bar now than we were years ago - we have come around to the realization that in the public interest there should be a law that affects these things and put a stop to some of the things that we all know have existed in the past.

MR. KEATING: But some of these malpractices have been so gross and apparent that I can't understand why the Bar Association hasn't taken a positive stand. You certainly didn't need a law to guide the Bar Association on some of the matters that have been brought before this Commission.

MR. CARPENTER: You're right. But since the Constitution provides that the Senators and the members of the House are the judges of their own members, they had the first crack at it where they have the evidence. The Bar Association is loathe to act until they have the evidence presented to them. It has never been presented to them. I am sure of that, or they would have acted. It has never been presented to the Supreme Court or it would have acted. The reflection that exists against the State Bar for not moving is also a reflection against the Court because when these things came out publicly the Court never issued an order to show cause. That is the reason why we need a statute.

ASSEMBLYMAN FRANKLIN: Mr. Carpenter, I hope you don't mind all these questions.

MR. CARPENTER: I am delighted to have them. In fact, if I can be of any help that is what I am here for.

ASSEMBLYMAN FRANKLIN: I wondered if I could turn to bill number 2, section A.

MR. CARPENTER: Yes, sir.

ASSEMBLYMAN FRANKLIN: I notice that the prohibition there in effect says that no officer or employee of a State agency or legislative employee, nor firm or association of which such person is a member, nor corporation of which such person is an officer or director, or of which five percent or more of the stock is owned or controlled directly or indirectly by said persons, shall sell goods, etc. having an aggregate value in excess of \$25.00 per annum to any person, firm, corporation or association which is annually licensed to do business or is regulated by a State agency.

Now, is it your feeling that that prohibition would prevent any firm or any such corporation that falls within this section from doing business, for example, with an insurance company or a bank, a State bank, or utility or an insurance broker or real estate broker or an attorney or other persons and agencies all of which are licensed to some extent and regulated by the State? Again I am trying to find out the extent of the application of the proposed bill.

MR. CARPENTER: Well, you can see, I think, what we are aiming at there. It's to stop --

ASSEMBLYMAN FRANKLIN: You see the problem I am raising. In view of the fact that so much commercial enterprise is either licensed or regulated by the State today, such a broad prohibition raises a problem, I think.

MR. CARPENTER: Perhaps that would be improved by saying "except on public bidding". Where you get a public advertisement and award to the lowest bidder, then you are all right.

ASSEMBLYMAN FRANKLIN: I still have one question, though, on that and that is, what about a business regulated by the State? Take an insurance broker who is licensed by the State. Of course, he doesn't in his business - if he is going to have his office painted, for example, he probably doesn't let bids in accordance with the statutes, and yet a corporation in which a member of the Legislature had a five percent stock interest presumably under this couldn't do any business with him of any substantial nature, if the prohibition applies to such a situation.

MR. CARPENTER: Haven't we had instances in the past where members of the Legislature or State employees have thrown vast insurance to their own particular agency without competitive bidding? That is the sort of thing you have got to aim at here.

ASSEMBLYMAN FRANKLIN: I am not questioning the validity of this section at all; I am trying to determine the extent of it.

MR. CARPENTER: Well, you have got to consider in a sense what has happened in the past and put up a bar so that it won't happen again. Somebody is going to get a little hurt by it but in the public interest we are all going to be better off. We have had those instances in the past and we want to avoid them.

ASSEMBLYMAN FRANKLIN: One of the reasons I am asking so many questions about the extent of the bill - and I might ask you to comment on this point - is that, as I said before, one of the things that has bothered the Commission is your federal employees are on a full-time basis. A Congressman, as you pointed out earlier, has a salary of \$22,500 a year with an expense account of \$2500, making a total of \$25,000. While that isn't much, most of them operate on a full-time basis, But many of your State legislative representatives and employees -- certainly your State representatives, most of them, couldn't on the basis of a \$5,000 a year salary do that as a full-time job. So they are engaged in private activities and our problem is, I suppose, one of determining the extent to which we can confine their business activities, knowing that most commercial activities today in one way or another are regulated or touched upon by the State government. I just wondered if you would comment on that.

MR. CARPENTER: Put it this way: If these acts of Congress are right and they have stood on the books for 90 years and nobody that I know of has ever tried to repeal them, - and Congress wasn't a full-time job back there 90 years ago and it is only since the First World War that we have had these sessions of Congress that last a whole year - if they are right as to a full-time employee of the State, a full-time officeholder, they are also right as to the part-time employee. It is a matter of right and wrong here, it is not a matter of how a man is somewhat affected by

it. If he is barred because of the public interest where he is a full-time employee, he ought to be barred by the same interest if he is a part-time employee. There can't be any compromise here between the State interest whether a man is working full time or part time.

ASSEMBLYMAN FRANKLIN: One of our problems as we see it, and this was an aspect of the whole problem that was very carefully considered by the New York Legislative Commission studying conflicts of interest and by Governor Dewey in New York --

MR. CARPENTER: I know that.

ASSEMBLYMAN FRANKLIN: -- was of course that if you set up the area of your prohibition on a very broad scale in these days where State government touches a great many or practically all commercial activity, commercial and professional activity, if you make it too broad then your problem is where to find competent people who will be in a position where they will not transgress the broad area of prohibition that you have outlined. And our problem is made more acute, I suppose, by the fact that when you are operating in State government you are operating within a narrowly limited territory and your business or your profession conducted in the State is much more apt to directly impinge upon some State regulation or activity than might be the case with the federal government, for example, say 20 or 30 years ago, and you are operating your business on the local level. I just wondered if you would comment on that. I know it is a long, lengthy, rambling question.

MR. CARPENTER: Well, as far as federal regulations or state regulations go now, I think there are far more in the federal government than there are in the State. You can't turn around without having to see what the federal regulations may be on any matter - taxations. You can't even die now without being affected by them. And the State is just about as broad.

ASSEMBLYMAN FRANKLIN: Of course. Again I want to get back to this one other thing. I am sorry to ask you so many questions but I am very interested .

MR. CARPENTER: That is what I am here for and I am glad to answer them.

ASSEMBLYMAN FRANKLIN: It seems to me that one of the factors that we have to consider - and it is just a factor, one of the things you weigh - is that there is a great deal of federal regulation, of course, but your federal people are on a full-time basis and so they are not partly dependent upon commercial or professional activity which would impinge upon the federal regulation.

MR. CARPENTER: I don't, personally, see any difference between the full-time man and the part-time man. I think if we are going to say a thing is right or wrong it doesn't matter if he works five days a year or 365 days a year. The thing is either right or wrong. If it is wrong, it hits both of them.

ASSEMBLYMAN FRANKLIN: Well, do you think that under the rather broad area of prohibition that I think we have

outlined this morning - is it your feeling that there will be sufficient room to secure competent people for State governmental and legislative jobs.

MR. CARPENTER: I don't think there is any question about it. I think the contention that good men won't serve in the legislature if you pass these laws is a reflection on the people of this State. And the reason for that is very simple. It is only one man or two men, a few men in a long period of years that would be affected by these laws. The great majority of men in this legislature - let's say that all of them today would not be affected by this, but you want to stop some things that have gone on in the past. I am not aiming this at anybody, neither is the Bar Association. We want a code of law laid down that will stop some things that have gone on in the past. You take the period that Roger Hind referred to when Governor Edison was Governor. Only a very few people were affected by that and that was at a time when conditions were really very bad. Only a few members of the legislature. And ninety-nine out of a hundred men who come down to the legislature come because of one thing - they want to serve, serve the interests of the State; number two, they want the honor involved; number three, some of them, take a lawyer, want to become better known and it is because he becomes better known that he has private clients come to him and he increases his practice. You don't want him to increase his practice limited almost exclusively to representing people who want to get something from the State that they are not entitled to.

ASSEMBLYMAN FRANKLIN: Well, isn't it so, to be specific about it, that under the provisions of section 3 of bill number 1, it would be my understanding, as you interpreted it for us this morning, that probably most attorneys presently in the legislature who are partners in firms should not continue either as partners in the firm or to serve in the legislature. So I think it would affect an area there.

MR. CARPENTER: Well, I speak for my own firm. I don't pretend to speak for what some other law firm would do. But I wouldn't want in my firm a man who was a member of the legislature, while he was in the legislature - before and after, okeh. I wouldn't want to have our firm put in a position where anybody could say to us - you are taking advantage of the fact that you have a partner who is in the legislature and that firm is getting something that no other firm could get - I don't like that.

MR. MARCIANTE: So far as your number 1 bill is concerned, that applies to legislators, it seems to me that we could very easily solve - the whole problem could be solved by not electing lawyers to the legislature. Is that right?

MR. CARPENTER: No. No. That's not so at all. I think the vast majority of lawyers --

MR. MARCIANTE: Then your number 2 bill would take care of the others.

MR. CARPENTER: Number 2 would take care of them but I think the vast number of lawyers are perfectly honorable

and reputable. It is the occasional man who comes down and takes advantage of the position, sells influence and so forth.

MR. MARCIANTE: Far be it from me to try to impugn the honesty of any lawyer. But isn't it a fact that if this bill were enacted -- What is your opinion? Do you think fewer lawyers would aspire to become legislators or not?

MR. CARPENTER: I don't think it would affect them a particle.

MR. MARCIANTE: You must understand I am for less of them in the legislature at the risk of getting in wrong with the lawyers' union.

MR. CARPENTER: Then, Mr. Marciante, you certainly are for this bill, aren't you? No. I don't think for a minute that any honorable man would be deterred from coming down to the legislature if you pass these bills. I do think that the fellow who wants to come down here for the purpose of trading on his position won't come down. You don't want him anyhow.

MR. YAUCH: I realize the sense in which Mr. Carpenter stated it but I wouldn't want to see get in this record any final conclusion by any member of this Commission, **and Counsel**, with respect to this very important subject, so I don't think Mr. Carpenter was serious when he said "Then you are in favor of this bill number 1" to Mr. Marciante.

MR. CARPENTER: Oh, no. I just couldn't resist that opportunity.

SENATOR MURRAY: Counsel, I am operating under the disadvantage of the failure of the Pennsylvania Railroad to run on time this morning and consequently I have some questions

here which, if they have already been answered in the record, I wish you would immediately inform me so as not to cover the ground again.

With respect to the general nature of bill No. 1, Counsellor, I have encountered considerable confusion in the minds of many who are interested in our study as to whether or not this bill is to establish standards of conduct for apparent or real conflicts of interest. And I would like to take, section by section, some examples and have your thinking on it, if you haven't already given it.

MR. CARPENTER: All right.

SENATOR MURRAY: For example, in bill number 1, section number 1, what is your thinking where a man stands for the legislature already in possession of some interest which, as I gather, section 1 respecting contracts with the State would prohibit only after or during his term of office. Suppose he already has the interest when he stands for term of office. What is your suggestion?

MR. CARPENTER: How can there be any conflict of interest until a man becomes a member of the legislature?

SENATOR MURRAY: Well, that's my question. He has the interest. He runs for office. He is elected. I am wondering whether section 1 would cover that. It appears to me to cover it only for something that arises during his term or two years after.

MR. CARPENTER: That's right. During his term of office or any contract authorized by law passed during the term for which he shall have been elected.

MR. YAUCH: Mr. Carpenter, the Chairman's question has to do with a situation, let's say, where John Doe has an interest in X Corporation and then five years later, after he has held that interest during that time, he becomes a member of the Senate or the Assembly. Would this section apply in that situation? Is that the question, Mr. Chairman?

SENATOR MURRAY: Yes.

MR. CARPENTER: Not at all.

SENATOR MURRAY: It would not apply.

MR. CARPENTER: No, I don't think it would at all because there wouldn't be a conflict of interest. You would have a status that was in existence when he became a member of the legislature.

SENATOR MURRAY: What about a renewal of a contract constantly in existence, say, for ten or fifteen years preceding?

MR. CARPENTER: I don't think that very question - the way it's put, I don't think I can answer it. It depends on the facts and circumstances, I should say.

SENATOR MURRAY: What I have in mind, without pinpointing any specific names or corporations, is the obvious practice in many instances of renewing contracts with the State, let us say with utility corporations, to give an example, or transportation corporations. I am wondering on the basis of service and perhaps even on a bid basis, I don't know, but what would happen if the president of such a corporation stood for election, under paragraph 1, and this contract came up for renewal?

MR. CARPENTER: I don't think it would apply unless he owned more than two percent of the stock of the corporation. That would be very unlikely, would it not?

SENATOR MURRAY: Well, I am assuming that he does own more than two percent.

MR. CARPENTER: I think you could make that two percent five or ten percent, something like that, but the purpose of that is to exclude the very thing you have in mind.

SENATOR MURRAY: I am wondering what the conflict of interest would be in such a case. Wouldn't it be covered by your number two paragraph in bill 1, that he would simply disclose it and not vote on it, if it required a vote.

MR. CARPENTER: That, I think, would answer the purpose.

SENATOR MURRAY: And then a third aspect, Counsellor, - there are innumerable situations, as I am sure you know, where literally thousands of dollars worth of contracts are let by the State and the only contact which a legislator may be said to have is when he votes for the appropriations bill, because the actual negotiation of and letting of these contracts are departmental obligations. What is your feeling as to the coverage of paragraphs 1 and 2 in such instances, assuming that John Doe, a legislator, has a ten percent interest in some corporation which duly negotiates or bids for a contract with a department, no vote being taken?

MR. CARPENTER: I would think if his only contact with it was voting for the appropriation and he didn't have anything to do with the negotiation, it would not be effective.

SENATOR MURRAY: It would not be effective.

MR. CARPENTER: No.

SENATOR MURRAY: I have also, with respect to bill number 1, paragraph 3, a few questions. One of our members since my arrival has, I think, briefly touched upon this but I would like for my own guidance to get your specific answer. Under this paragraph 3, would it or would it not be an exclusion for a lawyer in a perfectly routine situation, where, perhaps in a testamentary way, he has been nominated as lawyer for an estate, to appear before the estate tax division? What would he do?

MR. CARPENTER: Well, of course, it would be a very simple matter for him to comply with this law by having somebody else take care of that matter for him before the Department. That is one way of doing it. What you are aiming at is not that case which is after all a very occasional case.

ASSEMBLYMAN FRANKLIN: Excuse me, Mr. Carpenter. Wouldn't he be appearing indirectly if he had someone else appear for him?

MR. CARPENTER: I don't think so. I don't think so.

SENATOR MURRAY: What about his obligation under the testamentary direction? For example, - Personally, I

don't practice in New Jersey so it doesn't affect me but in New York, frequently, it has been my experience personally to be nominated and directed in the will to be the attorney or perhaps to be executor and attorney. What would occur in a similar situation in New Jersey, in your opinion?

MR. CARPENTER: There is no question, I think, about the fact whether you may be appointed as attorney and executor in a will. You still have the perfect right to employ outside aid.

SENATOR MURRAY: But is there a conflict of interest there?

MR. CARPENTER: I wouldn't think so because in that event if you are in the legislature and you have this personal matter coming before a department or agency, nothing in the world could prevent you from saying, "I'll step aside and have no conflict of interest. I'll employ somebody else to take care of this particular matter." That would be for the client, not for you.

SENATOR MURRAY: But what would the conflict of interest be if I didn't step aside? I don't see any conflict of interest, I must confess, in the normal situation. I could see it in an abnormal one but in a normal routine situation what would the conflict of interest be?

MR. CARPENTER: The only conflict of interest is where you, as representative of that client, - you may not like the way I state this but this is the way it occurs to me - you would go around throwing your weight around and say to the agency, "You'll either reduce this tax to what I say or I'll

put the boots to you when your appointment comes up in the legislature" - something like that.

SENATOR MURRAY: Well, I would certainly agree with your definition there but in the normal routine, don't you agree, there would probably not be a conflict of interest?

MR. CARPENTER: Yes, I certainly do.

SENATOR MURRAY: But I would agree with your definition, however, if that occurred. I direct a similar question with respect to the Public Utilities Commission - appearing before the Public Utilities Commission or the Alcoholic Beverage Commission. Again, would not such a conflict of interest, which you at this moment described and to which I fully agree, would not that be obviously rare? What about the routine situations?

MR. CARPENTER: Well, you are getting into a ticklish area there. I think what the bill ought to do - it is a little difficult to phrase it, of course - is to stop legislators from taking employment before these agencies, not in the routine case but for the purpose of using and selling their influence to get for a client that which he couldn't get except for that influence. Now, that is the sort of thing.

SENATOR MURRAY: Would you care to comment with respect to the posture of any legislator who might also represent in an official capacity a local government up to, let's say, the county level, and as such representative appear before the Public Utilities Commission. Would that involve a conflict in your opinion?

MR. CARPENTER: I don't think so.

SENATOR MURRAY: You do not think so.

MR. CARPENTER: I don't see any conflict of interest because the party is not the legislator, it is the municipality.

SENATOR MURRAY: That is what I was anxious to hear. Along the same lines, what is your feeling with respect to a magistrate?

MR. CARPENTER: In what way?

SENATOR MURRAY: In this conflict of interest bill, I believe it is your second bill where you are talking about employees of the State, would you feel that a municipal magistrate would be covered by that definition?

MR. CARPENTER: A municipal magistrate by Supreme Court rule cannot practice in his own county, you know.

SENATOR MURRAY: But what about the appearance before the various boards and whatnot of the State?

MR. CARPENTER: I see no objection to it, myself.

SENATOR MURRAY: Did you say that by Supreme Court rule a municipal magistrate cannot practice in his own county?

MR. CARPENTER: I may have misstated that. There is a Supreme Court rule on that subject and --

SENATOR MURRAY: There must be some marvelous loopholes involved in that.

MR. CARPENTER: -- and I think, if I recall correctly, that no employee of a magistrate or the magistrate himself cannot appear before any other magistrate's court in the

same county. I guess that's the way it goes.

MR. YAUCH: Or in connection with any business of the city, too, possibly.

MR. CARPENTER: Well, I don't know about that.

SENATOR MURRAY: I felt certain that there must have been a narrower definition.

MR. CARPENTER: There is a rule on it and I think I stated it correctly the last time.

SENATOR MURRAY: Yes.

MR. CARPENTER: But you know the judges of our courts can't practice law anymore. They put a stop to that. It used to be that Common Pleas judges could practice law. They can't anymore.

SENATOR MURRAY: We have received some inquiries about the conflicts of interest in that area, and I was happy to have your opinion on it. Then we have always been in receipt of inquiries from members of the general public as to whether or not the Bar Association's attitude was one primarily emphasizing attention to the legal profession or whether you were broadening your concern to other professions, such as medical, etc.

MR. CARPENTER: This bill, as we have drafted it, applies to anybody at all whether it is a businessman, an architect, a veterinarian or a lawyer. We weren't sufficiently narrow-minded to direct it only to our own class, you know.

SENATOR MURRAY: In paragraph number 5, Counsellor, of your bill number 1, would you care to comment as to your feeling on the constitutionality of that paragraph, particularly the disqualification clause.

different names or designations or a county chairman of any political party. Is that what you mean?

SENATOR MURRAY: No. I know that "party officer" was defined, but the word "political" itself, as I recall, is employed in terms of conflict or in terms of advantage. I am trying to find the exact clause and I am unable to do so at the moment.

MR. CARPENTER: Well "political party" is a pretty well-known designation. I think we all know what a political party is.

SENATOR MURRAY: I will find it in a moment, Counsellor. My recollection is that it was something with respect to political benefit. It was an adjective and it was not within the statutory definition, as I recall, and I wondered how that might be controlled in terms of enforcement. That is in section 7. "No officer or employee of a state agency or legislative employee shall accept employment or engage in any business, profession or political activity which will require him to disclose confidential information" etc. Now, would you assume the definision of "political activity" there to encompass membership on campaign committees, speakers' bureaus --

MR. CARPENTER: Absolutely. The thing is that this ought to apply to any and everybody.

SENATOR MURRAY: Not just party officers --

MR. CARPENTER: Any organization that required a member of the legislature to disclose confidential information so that somebody else can trade on it ought to be put a stop to.

I don't care how broadly you define it. It is to stop the giving away or disclosing of confidential information gained by reason of an official position or employment to further the personal advantage of the legislator who may reveal confidential information.

SENATOR MURRAY: Or the political party to which he may belong.

MR. CARPENTER: That's right, or anybody, church, political party, anybody, any organization.

SENATOR MURRAY: Speaking again on the political sphere, that would, I would assume from your very broad definition, almost exclude political activity, other than voting, on the part of those who in their ordinary course within state employment had information that was of a political nature.

MR. CARPENTER: It says that the vice is disclosing confidential information to further personal interest, whether business, professional or political. What are we aiming at here? We are aiming at those situations where a member of the legislature learns that the State Highway Department is going to build a road from here to there. It is going to be the shortest direct route. And then he goes out and trades on that confidential information, buys up lands and turns around and sells them to the State at a big price. Now, that has gone on in the past and that is the sort of thing that should be put a stop to. Why? Because it affects directly the public purse, feathers the nest of the fellow who gets the confidential information and uses it for his own political advantage. That has happened in the past.

SENATOR MURRAY: There have been complaints made, and I have no knowledge of the truth or accuracy of them, but with respect to activities in Civil Service, and I am wondering whether or not they fall under this category - a reclassification program - and I assume these complaints have been constant for many years, regardless of political party. But in certain areas it is claimed that, in order to freeze in members of one or another political party, reclassification information of an accurate nature permitting it to be done, etc., is placed at the disposal of those involved. I am wondering if this be true or if it be possible, if that wouldn't fall also in your definition of exclusion.

MR. CARPENTER: I am not aware of that situation at all, but I think our main thought was directed toward this personally trading on confidential information and passing it on to friends to buy up lands in advance of a public improvement and capitalize on it. Now, if that's a vice, why then the giving away of any other confidential information a legislator gets for his own personal advantage should be stopped, no matter whether it affects employment, the public purse, or what.

SENATOR MURRAY: I suppose the root of it is the definition of "confidential information."

MR. CARPENTER: That's right. The root of it is not necessarily confidential information; it's because a legislator gets confidential information and then, if he's of that stripe, he can trade on it. Now, that ought not to be allowed, whether it affects the Highway Department, or

the Public Utility Department, or the Alcoholic Beverage Department, or what not.

SENATOR MURRAY: Well, the section to which I refer did not encompass legislators. It was rather an employee or officer of the State, excluding legislators, because I don't know whether legislators in their routine would have access to confidential information on a constant basis.

MR. CARPENTER: I don't know what they would have but it's funny how sometimes in the past they have bought properties that later the State wants, and they get quite a profit out of them. How it happens, I don't know. People can draw their own inferences - and do. Is it right? Nobody is going to contend it.

SENATOR MURRAY: Have you had any complaints before the Ethics Committee of the State Bar with respect to a lawyer-legislator in conflict of interest situations?

MR. CARPENTER: I wouldn't know. I have never served on an Ethics Committee. But not to my knowledge; I'll answer you that way.

SENATOR MURRAY: Are there any further questions, gentlemen?

MR. YAUCH: I have a few.

Mr. Carpenter, I am certain that the reason for this extended questioning of you is because, without any attempt at flattery, we feel that you are a good source of information which may be helpful in this very difficult field. I take it from what I have heard you say here this morning that, in certain particulars, perhaps in an attempt to pass this bill so that it would produce the results you had in mind, the

language may be too broad. Am I correct in stating that that was said by you?

MR. CARPENTER: Well, I didn't put it in just that way but I said that this was the best job our Committee could do, that we thought it was the ideal; we recognize it's the last word, and we recognize that it can be improved. If it's too broad, it ought to be narrowed. If it's not broad enough, it ought to be widened. We have done the best job we can. We have put it in your laps, and we hope that you can resolve this in the way that we wanted to resolve it; namely, solely in the public interest.

MR. YAUCH: In view of the questions and the conversation back and forth here this morning, are there any items that suggest themselves to you, if you were to draft these bills over again, that you might treat a little differently?

MR. CARPENTER: No, I don't think I would. I think I would leave this up to the Commission here, knowing perfectly well that when they get done with it, it will be a good job because they will have the benefit of all the help that I have been able to give them, and Senator O'Mara, who is a good friend of mine, and everybody else. I think he's wrong in some things. He undoubtedly thinks I'm wrong in some things. That's what makes a horse race.

SENATOR MURRAY: Conflict of interest, isn't it?

MR. CARPENTER: Yes. Not conflict of interest, no; it's a conflict in view.

SENATOR MURRAY: May I ask, Counsel, did you cover with Counsellor Carpenter the question of the advisability

of some sort of a state body to which problems would be referred before they arose?

MR. YAUCH: Yes, that question was asked by one of the members of the Commission.

MR. CARPENTER: And I told them that I was advised years ago by an old lawyer that, whenever I had any doubt about how to do a job or whether I ought to take a case or whether I ought to do this or that, I should go and talk to some older man and get his advice and then you would keep pretty straight.

MR. MARCIANTE: Except that the older fellow wouldn't have any official status.

MR. CARPENTER: No, but he would be wholly disinterested and would give the best advice he could.

MR. MARCIANTE: My feeling is, and we may be perfectly wrong too, you know, that if he had that kind of body to advise him he would have an official word as to whether he were within his province or not.

MR. CARPENTER: Well, you know, if you had an official body like that - Number One, you got to pay them - you have to pay them adequate compensation--

SENATOR MURRAY: Well, that would not necessarily be so.

MR. CARPENTER: If they were not paid, we would run into such things as political favoritism, friendships, and giving advice that would just, after all, be an O.K. for a fellow to go ahead and do what he wanted - I don't know.

MR. MARCIANTE: Well, Counsellor, you are not searching for the millenium, are you?

MR. CARPENTER: What's that?

MR. MARCIANTE: We are not searching for the millenium. We are just trying to correct a condition.

MR. CARPENTER: That's right.

MR. YAUCH: Mr. Carpenter, to put the question directly that I am sure the Chairman had in mind and Mr. Marciante: Would you favor dealing with the problem that has been assigned to this Commission - the adoption by the Legislature of a code of ethics, and I am not excluding any other remedy, but would you favor the adoption of a code of ethics such as you know has been done over in New York State?

MR. CARPENTER: Well, I can't help but remember that Moses laid down a code of ethics a good many thousand years ago and you still pass laws to prohibit some of the things that are referred to in that. It's a good thing to have the law. I favor the statute making it clear. After all, a code of ethics goes only half way.

SENATOR MURRAY: Have you been asked, Counsellor, as to your opinion about strengthening the rules of the Senate and the Assembly over and above any statutory enactment, in order to make very clear the attitude of these bodies, much the way the Bar Association, with its code of ethics, conducts itself internally?

MR. CARPENTER: I don't think - as the statement read to you this morning by Mr. Kelly shows - I don't think that goes far enough

SENATOR MURRAY: I didn't mean it as the only answer, I meant it as part of a general series of remedies.

MR. CARPENTER: If you pass this law, I don't think you will need it, in the first place. In the second place,

I can remember the conduct of members of this House many years ago where they were never censured or put out or anything else - and I am speaking now of Senators some of whom are dead. You know, you belong to a golf club and you hardly ever throw a member out for tearing up the turf and not replacing the divots. It is very difficult to throw out one of your own friends and I think it is far better to leave that to the Attorney General to prosecute a statute.

SENATOR MURRAY: And, finally, Counsellor, would you care to give your opinion as to the efficacy, again not as the only remedy but as part of a general picture, of some sort of official board. You touched on it before. Do you think it would help or hinder in terms of part of a series of recommendations?

MR. CARPENTER: To have a board to pass on the conduct of a member of the legislature?

SENATOR MURRAY: No. On the question of conflict of interest not only with a member of the legislature but with anyone in the state employ.

MR. CARPENTER: In my opinion, you will get the best results to put a stop to conflicts of interest by having a statute to be enforced by the Attorney General rather than through anybody else. You have there an official set up by the constitution to do a job and he would have to do it.

SENATOR MURRAY: Thank you.

MR. YAUCH: The members of the Commission asked most of the questions that occurred to me to ask, as I listened

to your testimony, Mr. Carpenter, but there are just a couple of questions that I would like to put to you. The reason a lot of these questions have been asked is because eventually it is going to be the responsibility of this Commission of weighing the whole situation and possibly using the right terminology in the act, and so on, which is going to deal with the various problems that have been pinpointed here today.

Now, as to section number 3 of bill number 1, which deals with legislators, I take it that that does not only prohibit appearance before state agencies, so on and so forth, in cases where the state is a party but also prohibits a legislator from appearing before any of those agencies mentioned in section 3 on behalf of a private client.

MR. CARPENTER: That's right.

MR. YAUCH: Now, referring to section 1 of bill 1, just as a matter of information so that I have clear in my mind the reason for the difference that exists here in this paragraph 1 of bill 1 and paragraph 4 of bill number 2 --

MR. CARPENTER: Two and five years?

MR. YAUCH: No. I am not too concerned about two and five years.

MR. CARPENTER: Two and five percent, you mean?

MR. YAUCH: Yes, two and five percent. In the matter of legislators you have the amount of the holdings that may be held up to 2 percent; in the case of state employees you have used 5 percent. Is that at all significant? that difference?

MR. CARPENTER: My recollection is that we took those percentages from a law of one of the other states. I don't know whether it was New York State or some other state that had those differences and I just adopted them. Do with them as you please.

MR. YAUCH: All right. There is no real significance to that difference.

MR. CARPENTER: No.

MR. YAUCH: One other thing, please. In section number 4 of bill number 2, at the end, it says: "unless pursuant to an award of contract let after public notice and competitive bidding." Now, there is no such exception under bill number 1, paragraph 1, that applies to state legislators. Would you please state why you didn't think it was necessary to have that same sort of exclusion?

MR. CARPENTER: Well, number 1 was prepared first. Maybe I got a better idea later on. I think if you have public bidding you answer all the purposes.

MR. YAUCH: All right, sir. Now, my last question: I showed you before you started testifying a copy of the opinion of Judge Hughes in the South Amboy Trust Company - Hoffman Case.

MR. CARPENTER: Yes.

MR. YAUCH: Do you think -- now, I am not pinning you down to this because I realize that it would require probably an analysis of the language of these acts and so on, but, just for our general information, do you believe that the provisions of these two bills, 1 and 2, which are

advocated by you and the State Bar Association, would deal with the situation which is disclosed by the opinion of the Court in that case? You recall there where one party was the President of the Bank and at the same time held an official state position, and he did business with himself.

MR. CARPENTER: Of course, that is direct conflict of interest. Now, whether these bills would hit that or not, I would have to read them over carefully to see, myself, but the law affects that. That is a matter really of a man's own conscience. You can't help that.

MR. YAUCH: And a breach of trust.

MR. CARPENTER: It certainly was a breach of trust. You can't by legislation affect all possible types of breaches of trust.

MR. YAUCH: There is no doubt about that. Well, I believe we have covered all the questions I had in mind as we went along listening to Mr. Carpenter. Are there any other questions?

SENATOR MURRAY: Something came to my mind while you were questioning him, Counsellor, and it is again a matter of definition. Under paragraph 3 of bill number 1, where you have the exclusion of members of the legislature from appearing before any state agency, etc., will you include in that such organizations or bodies as the county tax board, the members of which with respect to that county must be approved at least by the member of the Senate from that county.

MR. MARCIANTE: I believe that was covered, wasn't it?

MR. YAUCH: Well, not specifically. There was a question before as to local officials, like freeholders and so on, and I believe Mr. Carpenter stated that he didn't believe this bill applied to them.

SENATOR MURRAY: I am talking, Counsel, about appearances by a lawyer legislator before a county tax board, the members of which he, as a senator, may have approved of.

MR. CARPENTER: I do not think he ought to appear and argue for reduction of taxes for this reason: the state's tax and state's revenue is directly affected to some extent, not as much as the municipalities, of course, in the county, but to some extent the state gets some of those taxes. I don't think he should be there. I have known of an instance where a state senator appeared before a county tax board and came out and bragged about how he was going to get away with something. Now, that isn't right.

SENATOR MURRAY: Well, is it inherently a conflict of interest, in your opinion, that a legislator should favor reduction in taxes?

MR. CARPENTER: For a particular client?

SENATOR MURRAY: Either for a particular client or by voting for a bill which would benefit himself as one of the taxpayers.

MR. CARPENTER: Again, what you are aiming at is the use of the legislator's position for the purpose of getting something that somebody else could not get.

SENATOR MURRAY: That is obvious, yes.

MR. KEATING: Mr. Carpenter, the Counsel to the Commission has raised a question in connection with the South Amboy Trust opinion. That is the case, isn't it, Counsellor?

MR. YAUCH: Yes.

MR. KEATING: Will you specifically point out in either bill number 1 or 2 the section of either bill that would prevent the Governor of the State of New Jersey from repeating what was done in that particular case.

MR. CARPENTER: That would come under number 2 because he was not in the legislature at the time.

MR. KEATING: Bill number 2? Bill number 2. That covers employees.

MR. CARPENTER: And officers.

MR. KEATING: Well, which particular section would prevent what is alleged to have happened in that particular case, that is the funneling of state funds through a given bank?

MR. CARPENTER: I do not think that it would touch that situation.

MR. KEATING: Then to that extent these bills are grossly defective.

MR. CARPENTER: I wouldn't say so. I say that for this reason - you can't possibly draft a bill that is going to stop the machinations and the devices of a man who wants to put over something. You can't anticipate it. The common law takes care of that, as it has in that particular case. You have got to bring suit. That gentleman could have been

punished, undoubtedly, under some other law had he been detected while he was alive.

MR. KEATING: Then you think there is adequate legislation to cover such a situation.

MR. CARPENTER: Well, there is legislation. Now, let's see if I can put my finger on it. I think in my report I stated the various conflicts of interest that apply - impeachment of a public officer; he might have been impeached. He held a position as head of a department. Embezzlement by public officials - he could have been probably indicted under that. Attempts to commit an indictable offense, conspiracy, misconduct in office - there are plenty of statutes that apply to that sort of thing. I don't now recall all the details of it but it was a misuse of state funds which amounted to an embezzlement.

SENATOR MURRAY: Counsel, may I make an inquiry with respect to section 6 of the second bill, where you describe "party officer" which we touched upon before. I meant at that time to ask you why did the definition exclude any party position below the state level, except county chairman which is specifically mentioned. It would seem to me that a municipal or county level political officer of any designation would not be excluded and it could almost mean that, let's say, the most active campaigner for a certain partisan group or party could serve as judge of a court of record unless excluded by this section 6 which doesn't seem to apply to municipal levels or county levels.

Woodbury of which he was President. That I think was all changed. There was quite a scandal about it. He is dead now. He has been dead many years. I remember that Mr. Margetts, when he was State Treasurer, put through a regulation or rule or an order that he would not deposit any funds of the State in any bank unless they agreed to pay a certain rate of interest. It can be controlled by the Commission. I don't know whether there is a statute on that or not.

MR. KEATING: Then you really feel that matters like that, such as the direction of deposit of State funds in certain banks can today be controlled by departmental regulation providing the department head wants to enact such a regulation.

MR. CARPENTER: There is no question about it.

MR. KEATING: Now, we had before us at the last public hearing various departmental heads of the State and it would look as if they have done a pretty good job of cleaning their own house. Have you, of your own knowledge, a regulation which would prevent a recurrence of what has happened in the South Amboy Trust Case?

MR. CARPENTER: No.

MR. KEATING: Well, would you recommend that the Bar Association incorporate in this bill a specific clause which would prevent it in the future because that, of course, from the standpoint of its magnitude, is a gross conflict of interest.

MR. CARPENTER: Well, when you talk about the deposit of State funds in banks, the economic conditions from time to time cause dangers, and I don't think it would be wise to pass a law to that effect for this reason - interest may or may not be allowed on a bank account. There was a great deal of objection when Mr. Margetts put through that order because some banks had deposits, wouldn't put up bonds to secure them and wouldn't pay interest. You may run into orders from the Federal Reserve either to pay interest or not to pay interest. I don't think you ought to interfere too much with that sort of ebb and flow of moneys.

MR. KEATING: Well, where do you draw a distinction between a legislator --

MR. CARPENTER: I think we ought to rely on the conscience, if you want to put it that way, or the integrity of the men who are appointed as State Treasurers and State Comptrollers to control that thing subject to the publicity and the light of day that flows in on those things now, when it didn't used to.

MR. KEATING: Well, why do you draw such a fine distinction between a legislator who is an officer of a corporation and a legislator who is an officer of a bank?

MR. CARPENTER: You mean a legislator who is an officer of a bank?

MR. KEATING: Yes.

MR. CARPENTER: Depositing money of the State?

MR. KEATING: No, but --

MR. CARPENTER: He can't do it.

MR. KEATING: No. A State official can direct the deposit of funds in a favored bank merely because the legislator is an officer of that bank. Now, I am not talking about specific cases, I am just talking about what may happen. You were very clear about the prohibition against an officer of a corporation who is a legislator appearing against --

MR. CARPENTER: It may be that that should be broadened to stop that or prevent any trouble about it. I think that sort of thing has been done by the State officer rather than any legislator. They suffer no loss in that, you see, except loss of interest.

MR. KEATING: That's what I am attempting to cover - the conflict of interest of a State official who directs the deposit of funds in a favored bank. That is the nub of the South Amboy Trust Case, as I take it.

MR. CARPENTER: That's right.

MR. YAUCH: Your point is, Mr. Keating, that if funds hadn't been on deposit in the South Amboy Trust Company Bank there would not have been any loss.

MR. KEATING: That is correct, Mr. Yauch.

MR. CARPENTER: I think that, perhaps, should be included in a law directed right to the State Treasurer and the Comptroller or somebody. It should affect that department rather than a general law on the subject matter.

MR. KEATING: Well, Mr. Carpenter, don't you consider that an example of conflict of interest?

MR. CARPENTER: It is to deposit money, there is no doubt about it, in his own bank.

MR. KEATING: Well, what is the difference between a Highway Commissioner who awards work to a firm of which a legislator is a member and the State Treasurer who deposits funds in a bank of which a legislator is an officer.

MR. CARPENTER: Essentially, there is no difference. Maybe we ought to broaden this beyond the area where we have attacked it.

MR. KEATING: Well, that was my original question - should the bill include a prohibition against that type of conflict of interest.

MR. CARPENTER: How would you like me to make an attempt to draw a paragraph on that and send it to you.

SENATOR MURRAY: That would be welcomed.

MR. CARPENTER: I will try it.

SENATOR MURRAY: Are there any other questions, gentlemen?

MR. YAUCH: Mr. Chairman, we have two witnesses here that haven't been heard yet, Mr. Richard Amster of the New Jersey State Bar Association and Mr. Thomas Kean, Public Relations Director of the New Jersey State Federation of Labor.

(Discussion off the record)

SENATOR MURRAY: May I thank you, Counsellor Carpenter, for your very excellent assistance to this Commission and, through you, your own Committee for the fine work which they have done.

We will proceed, Counsel.

MR. YAUCH: Mr. Chairman and gentlemen of the Commission: Our next witness is Mr. Richard Amster, an attorney of this State from Newark, who is a member of the New Jersey State Bar Committee that prepared the reports Nos. 1 and 2, having to do with the bills that have been referred to here this morning, which are sponsored by the New Jersey State Bar Association.

As I stated before with reference to the other representatives of the State Bar who have appeared here this morning, we are certainly very grateful for their cooperation in bringing us this information to assist us.

MR. RICHARD AMSTER: Mr. Chairman, it is with some degree of trepidation that I appear after my distinguished elders and betters have spoken to you, but I will do the best I can.

I was a member of this committee and have been quite interested in this subject, and I did some of the research on it and I thought I might be of some assistance in giving you some of the thinking of the members of the committee. My own feeling with regard to the drafting of the legislation was that the major effort should be made to preserve the adversary nature of transactions between private citizens and the State of New Jersey. I am sure that the lawyers, and also the non-lawyers, of the Commission will recognize that in many cases where a claim is asserted against the State, and the claim being handled by an administrative agency of the State, in essence the claim is of an adversary character. There is the State; there is the private litigant - one being represented by the Attorney General's Office or an attorney of the Department, and the private citizen being represented by an attorney who

is asserting a claim.

I want to make this point: We have all talked about degree here. When you and I talk about the blatant case of a shocking conflict of interest, I am sure we are all in complete agreement. There is no problem with that. All of us agree, and I imagine that ninety-five per cent of the citizens of the State, if not a hundred, acknowledge the fact that that should be stopped and that we have had enough of them.

I will give you a little background of one of them in a few moments.

It is the case that is not so obvious which is the one which gives us all the most trouble. It is very difficult, and we struggled with this bill to a point where it is exceedingly aggravating, because you want to set up proper limitations but at the same time you don't want to harm nice people who are down here and doing a reputable job. But it is the not so blatant case that can be difficult. It is the case of appearing as an attorney representing property owners when a highway is going through. Now, I cannot think of any case where the sale is being negotiated, where the adversary nature of the transaction should be preserved as zealously as that particular case. That is the case where moneys are being paid and people are battling over the amount, and the money is coming out of the taxpayers' pocket either directly or indirectly.

I can think of the case - and, Senator Murray, this deals with the estate problem and, bear in mind, you have touched upon the most difficult question to answer - the man who has a continuity of retainers and who then comes down here

to serve his State and his county and finds himself in a situation where he didn't get those clients by virtue of his legislative appointment - he got them before he was a legislator. But I think it puts him to a pretty rigorous test in a case where he files an estate tax return and the State Treasurer says, "Oh, no, that one million dollar transfer last year is a transfer in contemplation of death and we are going to include that as part of the taxable estate." Now, he's got a problem, because now it has become an adversary contest. It has become a contest by the people of the State of New Jersey, through their Treasurer, against his client. And he, by virtue of his office, if he's a Senator more particularly, but if he's an Assemblyman also - by virtue of his office may have an unfair advantage, a jump on the rest of the lawyers and the rest of the citizens of this State.

SENATOR MURRAY: Is that of itself a conflict of interest? I wouldn't think so.

MR. AMSTER: I say to this extent: Now, you must consider the other aspect of this, and this, I think, is the critical aspect of it: All of us here have heard people make derogatory remarks about politics, and in certain counties of this State I think the majority of the people would rather seek the assistance of a politically-connected lawyer as opposed to any lawyer, maybe on the mistaken belief, and probably in most cases on the mistaken belief, that he can get the jump.

Well, I think that in a situation of that sort, the very fabric of democracy is in jeopardy, when the public of this State, or any substantial proportion of them in any

particular part of this State, feel that the equality of treatment is not guaranteed except in the case where you look for the best man, and by "best man" you don't mean the most able, the most erudite, the most effective advocate, but you mean the man with the best political connections in dealing face to face with the representative of the State, who is asserting a claim against you. Then I say that that is the second facet of the problem that you as legislators and you as members of this Commission must face.

SENATOR MURRAY: What is the conflict of interest there, Counsellor?

MR. AMSTER: The conflict of interest in that case is that you are representing a client in a matter where you are also under a fiduciary relationship to the public which elected you. Again I acknowledge that this is a difficult thing to see, but I happened to get a little language on this point. In this State, as in most states, our courts have been intransigent in not permitting any encroachments upon the absolute requirements that are imposed upon a fiduciary. And there are many cases where a fiduciary in honest error has been surcharged when actually it seemed unjust to the lawyers who read the case and the people who argue it for him to be done so.

SENATOR MURRAY: Counsel, I am stopping you because I don't think my last question was clear. I was asking where is the conflict of interest, not with respect to the obvious adversary position that you described, but to the secondary manifestation which you dwelt on at some length; namely, the presumed advantage that one lawyer as a legislator has over another, not even in the case who isn't a legislator.

MR. AMSTER: No, no. I think that is a policy consideration. We are not dealing with the essence of the conflict of interest. But getting back to the harshness of imposing absolute standards upon a fiduciary, and every member of the Legislature is in a fiduciary capacity - our courts have held that recently - I want to read you what Mr. Justice Cardozo said, where a fiduciary came to the court and said, "You're being unfair to me. I did this in good faith. I think you should make an exception in my case because we have all acted in the best of faith." And this is a very famous case - Meinhard vs. Salmon - when he was then the Chief Judge of the New York Court of Appeals.

MR. YAUCH: Do you have the citation?

MR. AMSTER: Yes, I do. It is 249 N.Y. 458, 164 North-eastern 545:

"Many forms of conduct permissible in a workaday world for those acting at arms' length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncomprising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd."

Now, I think that's magnificent language and, in some instances, answers the problem that Mr. Carpenter struggled for the answer to, and I think I will struggle for it.

What about the exceptions - reducing it away from the blatant conflict? We both acknowledge that in the serious case there is no question. But if there is a threat of detriment to the public interest, then I say we have come to the point where we ought to foreclose it forever. And, sure, we are going to harm some people a little bit - some a little bit more - but I think that the public interest in these particular cases outweighs the detriment to the individual.

Essentially our canons of professional ethics have struggled for years, and that was a particularly damaging question that was asked, "What's the matter with the Bar Association?"

My only answer to that is that the Bar Association today, and as it did under the distinguished leadership of your counsel, is struggling to assert an absolute standard of morality in this State. We may make mistakes and we may not always be as diligent as we should be, but we are doing everything in our power, that is consistent with the public good, to effectuate those ends which will enhance and strengthen the fabric of democracy which all of us enjoy and accept as an integral part of our lives.

So there is this problem - there is this problem of the not so blatant case. But I want to take a few minutes of my time, and I don't have too much left, to talk to you about one conflict of interest case that was before this Legislature in 1941. It's a very famous one, and I suggest that at your leisure, if you gentlemen would address your attention to two volumes that are in the State Library-- It is a report, under the Edison administration, of Sidney Goldmann, Thomas

Graves and Roger Hinds of The Organization and Administration of the State Highway Department, and I want to read you just a few portions of it. The first thing I would like to read you is a table which appears on page 312 - portions of this table. It is a table of percentages in excess of appraisals paid to property owners during the condemnation of a certain right-of-way - percentages in excess of appraisals in the Highway Department files. Now, in the preface to this table the reporters advise that they had to eliminate many appraisals where obvious wrongdoing had taken place. They threw those all out. They tried to take a sampling of good appraisals in good cases.

Now, where the property owner was not represented, he received 100.44 per cent of the average appraised value in the Highway Department's files for his property. He received 103.39 per cent of the Department's appraisal - the Highway Department's appraisal. You see, in these cases, there are Department appraisals and outside appraisals. So the non-represented property owner came pretty close.

Where non-political lawyers represented these property owners, he received 108.86 per cent of the average appraisal and 110.07 per cent of the Department appraisal.

Now, I'm going to skip down a few:

Former legislators - average appraisal 111.24 per cent; Department appraisal 122.87 per cent.

Legislators in the 1941 Assembly and Senate - that's when this report was drafted - 117.14 of average appraisal and 127.75 per cent of Department appraisal.

This is what the reporters said: "Owners represented by members of the Legislature, former legislators, or attorneys identified in politics, and contractors or other persons having other business relations with the State Highway Department, obtained a price substantially in excess of the Department's appraisal. Owners who were not represented, or who were represented by attorneys or agents without known political connections, obtained a price reasonably in line with the average and department appraisals."

Now I want to go on. On page 348 of this Report, the following is set forth: "The investigation into the affairs of the State Highway Department, particularly in connection with real estate acquisitions, indicates the need of regulating the activities of legislators and other persons where the business of the Department is concerned. The theory of such regulation is that those in a position to wield possible influence or to acquire confidential information regarding the affairs of the Department, should not be allowed to negotiate with the Department.

"The Federal Government has such a statute" and I'm skipping a few words. Now, there's a footnote. The footnote says: "A bill patterned after the Federal statute dealing with this subject was submitted by a member of the Legislature on November 13, 1941." That's the State Legislature. "However, he was refused permission by the majority leader to introduce the bill." Then it goes on to describe the bill.

So in 1941 this very subject that we are talking about now was troubling the citizens of this State.

On page 637 of the Report, it states as follows:

"A survey of all right-of-way transactions involving over \$2,000 consummated during the administration of the Highway Commissioner revealed that owners represented by members of the Legislature, former legislators, or attorneys identified with politics, and contractors or persons having other business relations with the State Highway Department, obtained a price substantially in excess of the Department's appraisal."

And last, but not least, on page 671, they make as the iron-clad recommendation: "The investigation into the affairs of the State Highway Department, particularly in connection with real estate acquisition, indicates the need of regulating the activities of legislators and other persons where the business of the Department is concerned," etc., etc.

A supplement to that report was filed. This report was primarily the responsibility of Sidney Goldmann, now a Judge, and Thomas J. Graves, who was then the Public Relations Director of the State Chamber of Commerce. Roger Hinds, a man of distinguished reputation at the bar, filed a supplemental report. That is also in the State Library. Both of these are available here. I got your Sergeant-at-Arms to get them out for me.

MR. YAUCH: I called the Commission's attention to both of those. We are very glad to have you pinpoint some of the items.

MR. AMSTER: On page 154 of Parts I, II and III of the Report, Mr. Hinds makes this observation:

"Your examiner has, from the beginning of the investigation," (this was in 1941, incidentally) "insisted that it is against the public interest, and costly to the taxpayers, for the members of the State Legislature to represent private clients in negotiations with the State Highway Department, and also that the appointment of 'outside' appraisers in certain counties was largely political, resulting in the selection of unqualified men for the work." And then he deals with a specific case which involved a State Senator of this State.

MR. YAUCH: May I ask you right at that point: The figures that you quoted from that report, as I recall, had to do with negotiation.

MR. AMSTER: Negotiation, yes, sir.

MR. YAUCH: Not court verdicts in connection with condemnation.

MR. AMSTER: Absolutely. I want to make that clear.

This is a criticism of appraisal and negotiation procedures in this particular aspect. It doesn't deal with the actual court condemnations themselves.

Now, I have read the statements that were contained in the press by the various members of the Legislature who were questioned by the reporters. I recognize, of course, that the reporters interpolate themselves in many cases, but I would like to talk about one or two of these statements:

Two of the non-lawyer legislators stated that the proposals of the State Bar Association were too stringent against attorneys. Such is not the intention, nor is it the purport of the legislation. I would only say in answer to

that, "If the shoe fits, wear it." These bills were drafted to cover every single member of the Senate and Assembly of the State of New Jersey. If, in a given case, it affects a lawyer - lawyers more particularly than other members of the Legislature - so be it.

MR. KEATING: But, Mr. Amster, apparently it was not drawn to cover officials of the State Government.

MR. AMSTER: I am talking about Bill 1 now, Mr. Keating. Bill 2 covers officials.

I think that the September 22 article that I have in front of me, in the Newark Evening News, deals with Bill 1. That is the article where Senator Cowgill said in his statement, "If we're not honest, we don't belong in the Legislature."

Well, I say that it's the opinion of the State Bar Association that we are wholly in accord with him, but we feel that honesty is a standard -- when I say we are wholly in accord with him, I mean that honesty should be a condition precedent to any public trust. But we also feel that the same argument might be made against a bank teller. If he is not honest, he doesn't belong where he is handling money.

SENATOR MURRAY: Did you say "Senator Cowgill"?

MR. AMSTER: Yes, it says, "Senate Minority Leader Joseph W. Cowgill of Camden was vehement in his opposition." "If we are not honest, we don't belong in the Legislature," was his statement. That's what he said.

SENATOR MURRAY: You don't mean that he said that before this Commission?

MR. AMSTER: No. This was an outside statement.

SENATOR MURRAY: Senator Cowgill didn't appear and I was just wondering if you were confusing him with Senator Waddington.

MR. AMSTER: I don't think anybody would argue that we should eliminate statutes dealing with embezzlement and larceny and the like. Honesty is assumed in cases of this sort.

Assembly Speaker, Mr. Mills, has stated that "the restriction might automatically keep a municipal attorney like himself out of the legislative picture. "A lot depends on the morals of the individual people, and morals can't be legislated."

I believe that the statement that was issued indicates that morals is legislated in this State on as many occasions as we can, and the great concern as to pornographic literature at the present time is an attempt to legislate morality. So I think that that does not particularly hold water.

Now, I differ with Mr. Carpenter one iota. I am not at all convinced that in a given case there might be a conflict by a person who holds both a job in a municipality and a person who holds a job as a Senator of this State or an Assemblyman of this State. I am not sure. But it is a problem and I think that the Commission would be unwise if they didn't weigh that matter very carefully, because I think it's a close question on occasion if a man might find himself in a position where he would be asserting an interest which was so specific that it might possibly constitute a conflict. I am not sure. I don't know.

MR. YAUCH: Mr. Amster, I really don't understand that point. Would you explain it a bit more, dealing with a local magistrate, and then you said a state legislator?

MR. AMSTER: I would say that an Assemblyman or a Senator, who holds a high county job, might find himself in a position where it is a very serious problem; he is torn between--

MR. YAUCH: You mean about appearing before a magistrate?

MR. AMSTER: No, no. I mean about coming right down here and voting. I could think of a rather serious problem in a case like that, where he certainly should not make an appearance before either a state agency or a county agency in that case.

MR. FRANKLIN: Could I ask you a question just at this point on that? Is it your feeling that a municipal attorney or an attorney who represents a county, or some other county or municipal body such as the Planning Board or Board of Adjustment, should not appear before any state agency; that is, an attorney who is a member of the Legislature?

MR. AMSTER: I don't think so, although I think he might have some rather serious problems with his own conscience or his own ethical standards. I only can relate it to what you and I accept. How many times in your practice do you seriously weigh whether or not the acceptance of a position in a case may or may not be wise in view of some other position you have taken in another case remotely associated with it? It happens all the time.

ASSEMBLYMAN FRANKLIN: Well, if one of the things you are interested in - and I gather from your testimony that you are - is not only the technical question of a conflict of

interest between the State and the private client of an attorney, but also the effect which a state representative by reason of his office may have upon the deciding body before whom he appears, I wonder what the difference is between a legislator representing a municipality before a state agency and a legislator representing a private client? I can't see the difference.

MR. AMSTER: As Mr. Marciante said to Mr. Carpenter, "You are not looking for the millenium, are you?" And I am not looking for the millenium. I will take the level of morality that is set forth in our statute, and I don't think, in that case, it would touch upon that particular aspect. I think that we have divided them to the degree that there would be no problem in that particular regard, although it would bother me, Mr. Franklin. I would be troubled by it.

ASSEMBLYMAN FRANKLIN: Well, looking at Section 3 of Bill No. 1, it would seem to me that the member of the Legislature was prohibited from appearing directly or indirectly, and there is no exclusion in the case of a member of the Legislature representing a municipality.

MR. AMSTER: My feeling on this is, and again here I am at a slight variance with my distinguished predecessor in this seat, I do not believe that a member of the Legislature whose partner is practicing law as a law partnership can appear. I don't believe his partner can appear before a state agency. The distinction I make - and there was particular difficulty on this point - is I believe he can appear pro se, for himself. I don't believe that it is either wise or practical to say that a State Senator, who is

personally involved or whose mother's estate is personally involved in a particular situation, is to be debarred from that. Now, that is quibbling to a matter of degree, but I don't know how else you would answer it.

MR. YAUCH: Isn't the possible abuse greater there, where the profit that he might make as a result of appearing before a state agency would be greater than in a case where he is appearing in a representative capacity?

MR. AMSTER: I recognize your point. However, I think that the legal philosophy of this State is that there is an absolute guarantee of the right to appear for yourself, and in this particular case, if my recollection serves me correctly, there was a case where a member of the Legislature was asserting a claim on behalf of himself, not too long ago, and it was more than adequately covered in the paper, and I think that in the attendant publicity in a situation of that sort you are going to come out all right, if there is disclosure.

SENATOR MURRAY: Counsellor, on that point, we have had drawn to our attention certain situations, not affecting any state employee, but where realty or financial consultants or insurance consultants, non-salaried and perhaps, indeed if you were to track it down, wouldn't even qualify as an employee but nevertheless hold that capacity with respect to a municipality, then with respect to the county of which that municipality is a part, then at times with respect to certain state transactions - similarly an auditor who audits the books for a board of education, then for the city from which the board derives its funds, then for the county through

which state funds pass to both the city and the board. Now, my question to you is, in these cases, where state funds are involved, although perhaps no state office or employment held, should we not explore that area of conflict of interest as well, because derivatively the State and its interests are very materially affected.

MR. AMSTER: Well, I happen to agree with you one hundred per cent. I wouldn't do it, but I mean, that's no criterion, and I am sure that the attorneys present in this room, on many occasions, have problems as to whether or not they should or should not. That's the standard that I go by. The canons of ethics touch upon so many of these things inferentially. This particular point is not touched upon, although Canon 6 deals with adverse influences and conflicting interests, and it says there that it is the duty of a lawyer, at the time of retainer, to disclose to the client all the circumstances of his relations to the parties, and any influence in or connection with the controversy which might influence the client in the selection of counsel. It is unprofessional to represent conflicting interests except by the express consent of all concerned given after full disclosure of the facts.

Within the meaning of this Canon, a lawyer representing conflicting interests, when in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose, etc., etc.

It is inferential. You shouldn't do it if you are a legislator, but it doesn't specifically cover. The Ad Hominem

Canon, Canon 32, which is a lawyer's duty in the last analysis-- it's awful pretty language. But again, here we are coming to grips with a specific; we are coming to grips with something that has troubled this State and has troubled other States of this country.

Now, in England they have a much more violent remedy. There is another doctrine called "The Constructive Trust Doctrine," and that is the imposition of a constructive trust and of any proceeds which are gotten in a manner which is inconsistent with a man's fidelity to the public. The Burlington Bridge case is an example of that in the State of New Jersey but, interestingly enough, in England they impose this with a ruthless vigor upon public servants, and it's common law over there; it's not statutory. This is an equitable concept that they have developed for many hundreds of years and they use it to great effect, because what happens is, if this constructive trust is imposed, you lose all the proceeds that you gain by virtue of the transaction, but under the federal revenue code you don't get a break on the income tax you have paid against it, so wherever you have made a big killing and they take it away from you, it hurts.

MR. YAUCH: Mr. Amster, that principle of law applies here also, doesn't it?

MR. AMSTER: I would say that I think it would be an extension of the law as it is now in existence.

SENATOR MURRAY: May I say, Counsel, with respect to the British, that they are equally ruthless in their statutory enactments affecting, for example, political

contributions. If my memory serves me correctly, although it may not be completely germane to your topic, members of Parliament who exceed, even by unsolicited contributions, the limit of the statute forfeit their winnings to the next high candidate. And I would recommend that we might study that.

MR. AMSTER: Well, now we are getting to Mr. Marciante's millenium.

SENATOR MURRAY: I personally witnessed a situation where a candidate in standing for Parliament, in a London district, requested his campaign manager to secure an injunction against an enthusiastic supporter who had put a sign up on his behalf, because the cost value of that sign would have exceeded the amount which the law permitted him to have as campaign contributions. It would be interesting to see the development of that doctrine in this State.

MR. AMSTER: In wrapping it up, I really appreciate--

MR. YAUCH: Just one question, and I realize lunch has been deferred too long now. But I just want this in the record. I don't think it's been covered at all:

Under Bill No. 1 of the State Bar, paragraph 3 - and this, as you know, deals with legislators - is it your thought that this bill would prohibit a member of the State Legislature from representing a client in a condemnation case brought by a municipality or a county or a public utility, all of which have the right of eminent domain?

MR. AMSTER: I think that this bill as presently drafted would only relate to the State.

MR. YAUCH: Well, I call your attention to the fact that in paragraph 3, it states, "either directly or indirectly

appear before a state agency, condemnation commissioner, or other instrumentality of the State of New Jersey."

SENATOR MURRAY: Would that include bi-state authorities, for example?

MR. AMSTER: Yes, I think it would include all of the authorities that are in existence by virtue of the acts of this Legislature, all the instrumentalities.

Mr. Yauck, my own feeling was - at least my intention and my understanding was that this touched upon the instrumentalities of the State and not the municipal and county bodies.

SENATOR MURRAY: If so, it would be certainly one of the rare occasions on which the authority of these so-called instrumentalities is in any way restricted.

Well, Counsel, if there are no further questions, we would like to express our thanks to you again for waiting so long and touching so cogently upon some of these problems.

MR. AMSTER: Well, thank you very much. I appreciate the opportunity of being here.

MR. YAUCH: Now, Mr. Kean, do you want to come up here?

MR. THOMAS J. KEAN: I am Public Relations Director, New Jersey State Federation of Labor.

First of all, gentlemen, I would like very much to thank you for this opportunity in behalf of our Secretary-Treasurer Vincent J. Murphy, who couldn't be here today due to a case of bursitis, which has him in bed. I wish to submit this statement explaining the position of the State Federation of Labor.

MR. KEATING: May I suggest to Mr. Kean that, in addition to submitting the statement, if he has any comments or any questions he would like to ask that have arisen out of any testimony heard here this morning, that he be permitted to do so now.

SENATOR MURRAY: We would be delighted to have his comments.

MR. KEAN: There is one comment, gentlemen: When Mr. Carpenter spoke this morning, in answer to a question from Mr. Marciante about the logic involved in the establishment of an Ethics Committee which, as you will note from the prepared statement - he said that for years he had been of the opinion and had practised same that he could go to any learned or elderly attorney and receive sufficient advice on matters that might be borderline. I disagree, particularly because such would not be official and also the opinion would be that of an individual.

With our proposal, as you will note from the statement, five members would be appointed - two by the Governor - I forget now the actual distribution, but I think that political lines and motivations would not be involved; I think that a fair opinion, because there is such a broad coverage of representation, would be arrived at.

That's my only comment.

SENATOR MURRAY: I think that Committee was: two by the Governor, one by the President of the Senate, one by the Speaker of the House, and one by the Supreme Court Chief Justice.

MR. KEAN: Who would be chairman.

The statement of the New Jersey State Federation of Labor is as follows:

The officers and the legislative committee of the New Jersey State Federation of Labor have given considerable thought and much study to the problem presented to the Legislature and to the Electorate arising from existing conflicts of interests and their effect upon our various public officials, legislative and administrative.

Our studies have led us to one major conclusion: that there is no adequate manner in which legislation can correct all of the evils involved in or resulting from conflicts of interest.

From time to time, it may develop that isolated instances will lead the way toward corrective legislation, but an overall cure does not seem to be available, at least at this time, through legislation.

All forms of legislation which have been suggested to date, with one or two exceptions, are obviously too drastic. To prohibit a legislator who is a member of the bar from practicing law before our courts is as wrong as to prohibit a businessman from buying or selling his merchandise, or a labor representative from representing his union.

There are only two practices which have clearly been shown to be subject to unreasonable abuse: first, the practice of a legislator or other public official of representing clients, as an attorney, before administrative bodies of the State in matters involving condemnation of the client's real property. This practice has been

universally condemned, and should, we believe, be prohibited by law. It is so small a fraction of the practice of law as to constitute only a very minor impediment to the full practice of the law.

Second, the practice of a public official having an interest, of policy-making nature, in a company engaged in selling goods or services to an agency of the state in which the official is employed. This is prohibited generally by statute as to counties and municipalities, and should be on the state level, at least with respect to administrative officials of the State. However, this type of prohibition as to legislators who have no administrative power to let contracts would seem unnecessary and inadvisable.

We are decidedly opposed to the proposal that candidates for election to state office should make public disclosure of their assets and income. This proposal violates the right of privacy which we, as Americans, have always cherished and protected. It subjects candidates for public office to snooping and embarrassment beyond that of other citizens and should be rejected as un-American.

As to legislation in other fields of conflicts of interest, we have been unable to conceive of any type of legislation which would not do more harm than good.

However, the Bar Association and more recently, the Labor Movement, have developed a system of investigation and report on morals and ethics that can very well be adapted to ethics in public office; namely, the establishment of canons of ethics by which public officials can be guided and for a

violation of which such officials can be punished by their superior, the electorate.

In the case of the Bar Associations, the various Ethics Committees have established, from their very long experience, a rather large number of canons of ethics. Charges against a lawyer are heard by the Ethics Committees which report infractions to the lawyer's superior - the court. The court then reviews the facts and imposes disciplinary action.

The organized labor movement, the AFL-CIO, has recently created a Committee on Ethical Practices. This committee has established, so far, five canons of ethical practices. It investigates charges of violations of these canons and reports to the superiors of the officers of the respective unions, namely, the Executive Council of the AFL-CIO and, indirectly, to the electorate of the union itself, the members of that union. It is then incumbent upon the membership to take such action as it deems proper to correct the evils.

A similar procedure could well be adopted by our Legislature. It could create a Commission on Ethical Practices in Government. This Commission could, after proper investigations, experience and study, adopt from time to time, as the occasion arises, a series of canons of ethics for public officials, by which they could guide their conduct in their private as well as public activities. Upon the filing of charges against any public official, whether legislative, executive or administrative, or on its own account, the committee could hold hearings to determine whether any of the canons of ethics had been violated, or whether any canon should be amended or adopted.

To aid the committee in its deliberations it should be clothed with the power of subpoena. It should be required to report annually to the Governor and the Legislature both as to its findings relating to ethics in Government and as to its recommendations of legislation to enforce ethical practices, if any.

To assume a well-rounded approach in its deliberations, the committee should consist of a broad representation of public and private groups. We therefore recommend that there should be five members, one appointed by the President of the Senate, one by the Speaker of the Assembly, two by the Governor, and one by the Chief Justice. The appointee of the Chief Justice should be a member of the Supreme Court or Superior Court bench, and should be the chairman of the Committee.

The Committee should be given no power of discipline whatever over any public official. The true superior over any public official is the electorate of the State which, when properly informed, can generally be expected to adopt the proper course.

For this reason, we believe that, after a hearing concerning charges of unethical conduct against a public official, whether legislative, administrative or executive, the Committee should be empowered and directed only to make a public report of its findings as to the guilt or innocence of the accused, and as to the factual basis of these findings.

The possibility and likelihood of a public hearing and a public report as to any alleged violation of an announced canon of ethics would, we believe, be an effective deterrent

against a violation of ethics by most public officials. Those who ignore these canons would be subject to public disapproval and an end to their tenure of office at an early time.

As to executive or administrative officials, a finding of unethical conduct could be made the basis of disciplinary proceedings by the Governor. Members of the Legislature are constitutionally not answerable to anyone but the electorate for their conduct in office, but each House of the Legislature is granted the power to judge the fitness of its members. In either case, a public condemnation by the Committee for unethical practices would, we believe, be most effective.

In addition, the Committee could, when necessary, make such recommendations as experience would dictate for the adoption of legislation which at present is either not contemplated or is deemed unnecessary or unwise. In this way, while legislation does not now seem practicable, further experience and study could develop effective and desirable legislative proposals. The study of the subject would continue, and proper legislation would not be forestalled.

In conclusion, therefore, we recommend the following:

1. Legislation prohibiting the legal representation in condemnation proceedings of any client by any public official.
2. No requirement that candidates for public office make disclosure of their assets or income.
3. Creation of a Committee on Ethics in Government, of five members appointed as we have suggested, with subpoena

powers, to create a series of canons of ethics, to investigate violations of any of these canons, and to make public report of its investigations.

4. No attempt to adopt any other legislation at this time, with the understanding that the Committee will recommend any legislation which it may deem desirable.

SENATOR MURRAY: Are there any other questions or comments, gentlemen?

MR. YAUCH: I haven't any, Mr. Chairman.

SENATOR MURRAY: If not, I will bring the meeting to a close on motion.

ASSEMBLYMAN FRANKLIN: I so move you, Mr. Chairman.

SENATOR MURRAY: May I just say to our secretary that I think we should append to our report the time, date and place of our next meeting, which I don't know whether you have decided upon or not.

ASSEMBLYMAN FRANKLIN: We haven't made any decision. We were waiting for you, Mr. Chairman.

SENATOR MURRAY: May we be off the record for just a minute while we consult on that.

(Discussion off the record)

SENATOR MURRAY: For the record, may I say that the Committee has agreed to convene again on Monday, October 21, in the Senate Chamber, at 10:30 A.M., for its next public hearing.

The meeting stands adjourned.

(A D J O U R N E D)

